

**38 CFR Part 36****RIN 2900-AR05****Loan Guaranty: COVID-19 Veterans Assistance Partial Claim Payment Program**

**AGENCY:** Department of Veterans Affairs

**ACTION:** Final rule

**SUMMARY:** The Department of Veterans Affairs (VA) is establishing through this final rule the COVID-19 Veterans Assistance Partial Claim Payment program (COVID-VAPCP), a temporary program to help veterans return to making normal loan payments on a VA-guaranteed loan (guaranteed loan) after exiting a forbearance for financial hardship due, directly or indirectly, to the COVID-19 national emergency.

**DATES:** This rule is effective [insert date 60 days after date of publication in the FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Andrew Trevayne, Assistant Director, Loan Property and Management, Loan Guaranty Service (26), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 632-8862. (This is not a toll-free telephone number.)

**SUPPLEMENTARY INFORMATION:** On December 9, 2020, VA published a proposed rule to establish a temporary program to assist veterans with VA-guaranteed home loans who request forbearance under the Coronavirus Aid, Relief, and Economic Security (CARES) Act.<sup>1</sup> The public comment period for the proposed rule closed on January 8, 2021.

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<sup>1</sup> See 85 FR 79142 (Dec. 9, 2020); Pub. L. No. 116-136 (Mar. 27, 2020).

Comments and questions submitted by veterans, lenders, servicers, consumer groups, and trade associations were generally supportive of VA's initiative. However, commenters raised significant concerns about certain program features. Most notably, industry and consumer group commenters indicated that the COVID-VAPCP differed from the Federal Housing Administration's (FHA's) COVID-19 Standalone Partial Claim program. According to the commenters, these differences made the COVID-VAPCP less helpful to veterans and less workable for servicers. We read the general theme of the commenters' recommendations to be that VA should finalize the rule with revisions that would make the COVID-VAPCP more similar to FHA's COVID-19 Standalone Partial Claim program.

In response to these comments, VA has made several revisions to the COVID-VAPCP in this final rule. Those changes, along with VA's responses to the public comments (including VA's responses where VA determined changes were not necessary), are described below.

## **I. Summary of Key Changes to the Final Rule**

As discussed in the proposed rule, the COVID-VAPCP is a temporary program that establishes a partial claim option to aid veterans with VA-guaranteed loans who suffer financial hardship due to the COVID-19 national emergency. In developing this program, VA modeled certain features after existing partial claim programs already available to borrowers with other federally backed mortgages; specifically, those insured or guaranteed by the U.S. Department of Housing and Urban Development's (HUD) FHA and the U.S. Department of Agriculture's (USDA) Rural Housing Service. VA's final rule aligns even more closely with both FHA's and USDA's partial claim programs.

Significant changes to the final rule in response to public comments include the following: (1) the partial claim maximum limit suggested by the proposed rule is doubled from 15 percent of the unpaid principal balance of the guaranteed loan as of the date the veteran entered into a COVID-19 forbearance, to 30 percent of such balance; (2) the proposed requirement that the veteran repay the partial claim within 120 months is eliminated; (3) the proposed requirement that VA charge interest on the new loan is eliminated, meaning the COVID-VAPCP loan is a no-interest loan for the veteran; (4) the proposed requirement that servicers complete a financial evaluation of the veteran is eliminated; (5) the timeframe for servicers to submit a partial claim payment request to VA is increased from 90 to 120 days; and (6) the proposed requirement that the COVID-VAPCP be the option of last resort is eliminated, meaning that servicers can use the partial claim payment option, even if other home retention options are feasible, provided that the partial claim payment option is in the veteran's financial interest.

As the COVID-19 national emergency and the CARES Act pass their one-year anniversaries, VA stakeholders continue to confront decisions that have far-reaching consequences. The COVID-19 pandemic is still causing severe illness, death, and disruption in the economy on a significant scale. These effects have resulted in continued financial difficulties for many veterans. Veterans who requested forbearances under the CARES Act in the first half of 2020 are facing the reality of exiting forbearance with significant forborne indebtedness while still dealing with the pandemic. Other veterans who have managed to continue paying their mortgages are now deciding whether to request forbearance for the first time as the COVID-19 national emergency enters its second year.

VA's partial claim assistance may well be the determining factor for certain veterans, affecting the extent to which they can recover financially from the crisis. Similarly, servicers are evaluating their liquidity positions and other factors to determine how to make the advances necessary for investor requirements. Some servicers may even be questioning whether they can stay afloat, which ultimately harms not just the servicer, but also the veterans whose guaranteed loans are being serviced.

The changes adopted by VA in this final rule are necessary to address the problems mentioned above. VA's COVID-VAPCP creates a "soft landing" for certain veterans, enabling them to return to their regularly scheduled monthly payments without suffering another financial shock. The program also provides a lifeline for certain servicers, thereby mitigating the risk that veterans will be left without the benefit of prudent loan servicing.

## **II. Discussion of Comments and Final Rule**

VA received eighteen comments in response to its proposed rule. Of those comments, twelve were from individuals and five were from lenders, servicers, trade organizations, or consumer groups. VA also received one comment co-signed by 27 national- and state-level trade and consumer organizations. Three commenters that joined the joint trade and consumer group comment also submitted their own comment, and VA has arranged those with the five other organizational comments. To the extent feasible, issues raised by commenters have been summarized and grouped together by similar topic.

### ***A. General comments***

VA received ten comments from individuals expressing generalized support for the proposed rule. Of those, four comments were from individuals interested in participating in the program once it is finalized. Additionally, VA

received one comment expressing negative sentiments about the proposed rule, though no specific complaints were provided.

#### *B. Alignment with Other Federal Housing Agency Programs*

As discussed above, a common recommendation was that VA adopt changes in the final rule to align the COVID-VAPCP with other federal housing agencies' programs. Those include programs administered by FHA, USDA, and the Federal Housing Finance Agency (FHFA).<sup>2</sup> Four commenters, including the joint trade and consumer group, expressed a preference that VA revise the COVID-VAPCP to be more similar to FHA's COVID-19 Standalone Partial Claim program. These commenters noted that aligning the COVID-VAPCP with similar programs offered by other agencies would be in the best interest of veterans, servicers, and VA. One commenter stated that the program, without such alignment, would likely cause "substantial and unnecessary mortgage re-defaults and foreclosure."

In recommending that VA align the COVID-VAPCP with other federal partial claim programs, commenters focused on three specific program features.

*1. Repayment Terms of the Partial Claim Payment (38 CFR 36.4805):* One commenter noted that VA should not charge 1.00 percent interest on the partial claim loan, as the financial situation faced by veterans during the COVID-19 national emergency is not due to the individual's own fault. Another commenter questioned VA's characterization of the repayment terms, including the 1.00 percent interest rate proposed by VA, as being "extremely favorable to veterans," given that FHA and USDA partial claim programs do not charge interest (or fees) on partial claims. That commenter also noted that VA did not explain why it was

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<sup>2</sup> The FHFA serves as conservator for the Government Sponsored Enterprises (GSEs) Freddie Mac and Fannie Mae.

necessary to charge interest on the partial claim payment. Finally, the commenter questioned whether the repayment terms, including the 1.00 percent interest rate proposed by VA, were even permissible in states with prohibitions against negative amortization loans.

Regarding VA's proposed ten-year repayment term with a five-year payment deferral, two commenters asserted that this program feature would cause substantial increases in veterans' monthly mortgage payments when repayment to VA began in year six, and that such increases would likely lead to payment shock and redefault. Both commenters pointed out that VA's own example in the proposed rule resulted in a 20 percent monthly payment increase at year six. Citing lessons learned from the 2008 financial crisis, these commenters noted that the repayment structure utilized by FHA and USDA avoids payment shock.

*VA Response:* VA agrees with comments opposing the proposed 1.00 percent interest rate on the partial claim loan and the ten-year repayment term. VA believes that veterans who need assistance recovering from the economic effects of the COVID-19 pandemic should not be charged interest and should not face the risk of payment shock. As discussed in the section-by-section analysis below, VA is therefore adopting repayment terms similar to FHA and USDA, wherein the veteran will not be charged any fees or interest for the subordinate loan established under the COVID-VAPCP. Repayment in full is required immediately upon the veteran's transfer of title to the property or the refinancing or payment in full otherwise of the guaranteed loan with which the partial claim payment is associated.

The veteran may make payments for the indebtedness, in whole or in part, without charge or penalty, a policy that carries over from VA's proposed rule and is consistent with FHA and USDA policies.

*2. Borrower Certifications and Residual Income Requirements (38 CFR 36.4803):*

Five commenters, including the joint trade and consumer group, suggested that VA's proposal contained unnecessary documentation requirements, including an application form, borrower and servicer certifications, and financial documentation requirements. One commenter proposed that VA require no documentation if the veteran was either current or less than 30 days past due on March 1, 2020. Two commenters specifically questioned VA's proposed requirement that servicers certify as to a veteran's monthly residual income being adequate as described in 38 CFR 36.4340(e). Both commenters noted that if the purpose of the requirement is to assess the veteran's ability to afford the additional partial claim payments, a current assessment is unlikely to provide any benefit because the veteran's financial situation is likely to change over the next five years while payments on the subordinate loan are deferred.

Similarly, three commenters pointed out that FHA, USDA, and the GSEs all have more streamlined documentation requirements that simplify access for borrowers and ensure relief is delivered timely. One commenter pointed out that VA's proposed rule creates "at least six discrete steps for a veteran to successfully qualify for a partial claim" which, in some cases, was more rigorous than existing VA loss-mitigation options. The commenter noted that the cumulative effect of these steps could "slow or suppress the partial claim enrollment process for veterans." Additionally, the commenter highlighted that at least three requirements (financial evaluation, new borrower disclosures due to

the interest being charged, and an application form) are not included in any other federal housing agency's COVID-19 loss mitigation program.

All three commenters noted that VA should follow the more streamlined options presented by the other federal agencies. One commenter also highlighted that loss mitigation offered at the outset of the Great Recession required large amounts of paperwork and “delayed relief and sometimes prevented borrowers from resolving their delinquencies.” That same commenter noted that enrolling in forbearance required no documentation, and specifically recommended that the COVID-VAPCP take advantage of the relaxed regulatory requirements announced by the Consumer Financial Protection Bureau (CFPB) in a June 2020 interim final rule.<sup>3</sup> The commenter asserted that VA should find a way to allow servicers to offer a partial claim option without completing an evaluation of all loss mitigation options available to the borrower based on a complete loss mitigation application (including financial information). The commenter stated that such flexibility is authorized by amendments made to CFPB's Regulation X.

*VA Response:* While VA cannot comment on the applicability of the CFPB's recent amendments to Regulation X, VA does agree with commenters that requirements in VA's proposed rule, namely, the certifications and residual income evaluation, are too stringent. VA notes that it did not intend to dissuade participation in the program, nor did it seek to create unnecessary paperwork for borrowers and servicers that could hinder relief. Rather, in requiring both veterans and servicers to certify as to the veteran's financial situation, VA was

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<sup>3</sup> VA believes the commenter was referencing the CFPB rule found at the following link: [https://files.consumerfinance.gov/f/documents/cfpb\\_interim-final-rule\\_respa\\_covid-19-related-loss-mitigation-options.pdf](https://files.consumerfinance.gov/f/documents/cfpb_interim-final-rule_respa_covid-19-related-loss-mitigation-options.pdf) (last accessed May 1, 2021).



attempting to ensure that veterans would not be put in a position where they would be unable to afford the COVID-VAPCP loan. Upon reviewing the comments, and in consideration of VA's decision to eliminate interest charges and the ten-year repayment term, VA is finalizing the rule with requirements more aligned with FHA's COVID-19 Standalone Partial Claim program. As described below in the section-by-section analysis, VA is eliminating the financial certification requirement and will allow servicers to use the partial claim payment option, even in cases where other home retention options are feasible, provided the partial claim payment option is in the veteran's financial interest.

As for the requirement that veterans certify their occupancy, VA notes that, much like FHA's COVID-19 Standalone Partial Claim program for FHA borrowers, one purpose of VA's COVID-VAPCP is to ensure that veterans remain safely housed during the pandemic. To help achieve this purpose, VA will still require that a veteran who participates in the COVID-VAPCP occupy, as the veteran's residence, the property securing the guaranteed loan for which the partial claim is requested. However, VA has determined that it is sufficient for the servicer to assess this requirement without collecting a certification from the veteran.

Given VA's elimination of the certification requirements mentioned above, VA finds that the proposed application form is no longer necessary. With the exception of the certifications, most of the information collected and presented on the form will be captured on the note prepared by the servicer and presented to the veteran. VA has further determined that those data elements from the form that may not be included in the note, such as the date of the veteran's next monthly mortgage payment to the servicer, are not critical to the rule and will likely be communicated from the servicer to the veteran in other ways.

*3. Maximum Amount of Assistance (38 CFR 36.4805(b)):* Two commenters expressed concern over VA's decision to limit assistance under the COVID-VAPCP to 15 percent of the unpaid principal balance (UPB) of the guaranteed loan at the time the veteran entered forbearance. Both commenters noted that FHA's and USDA's partial claim programs allow for assistance up to 30 percent of the UPB. One commenter further noted that, in calculating whether a 15 percent UPB cap would provide sufficient room for servicers to bring most guaranteed loans current, VA failed to consider the effect on older loans with smaller outstanding balances. Both commenters recommended that VA consider mirroring FHA's and USDA's 30 percent UPB caps; one commenter offered an alternative recommendation that VA consider eliminating the cap for low balance loans.

*VA Response:* VA agrees with the commenters who recommended mirroring FHA's and USDA's 30 percent UPB caps. While an increase to a maximum UPB cap of 30 percent will not enable every loan currently under forbearance to meet the requirements for the COVID-VAPCP, this change in the final rule will allow approximately 9,000 additional loans to participate (assuming other requirements such as occupancy and ability to resume regular monthly mortgage payments are met), with minimal additional financial risk to the Government.

The increase to the UPB cap does not affect the unique option that VA included in its proposed rule, which would allow for a veteran to make an optional payment or for a servicer to waive amounts that would otherwise prevent a veteran from participating. Even with VA adopting a higher UPB cap in the final

rule, VA is maintaining this feature of the program, as it could help more veterans be able to receive the assistance, at no additional cost to the program.

VA declines at this time to increase the maximum amount of assistance beyond the 30 percent UPB cap or to eliminate the cap for smaller balance loans. This rulemaking marks the first time that VA has administered a partial claim program. VA firmly believes a new partial claim program is necessary to help veterans, but it constitutes a fundamental shift for VA and all stakeholders—veterans, the lending and servicing industry, investors who provide liquidity to the industry, Congress, and other federal agencies. Now VA is, in this final rule notice and before the program is underway, already doubling the proposed UPB cap to put it on par with the 30 percent UPB cap in both FHA's and USDA's partial claim programs. VA notes, too, that those caps are statutory, and Congress has not adjusted them in response to the national emergency.<sup>4</sup> Since VA has never administered a partial claim program and Congress has limited FHA's and USDA's partial claims to 30 percent UPB, VA does not have enough information at this time to accurately forecast the range of potential outcomes of pushing beyond the 30 percent cap. Furthermore, VA believes that if VA were to decide to push such a boundary, introduction of the concept would be better suited to an additional rulemaking where the public could provide additional input.

*C. Expand Coverage to Loans that Became Delinquent Before March 1, 2020 (38 CFR 36.4803(a))*

One commenter requested that VA consider eliminating the requirement proposed in 38 CFR 36.4803(a) that the guaranteed loan was, on March 1, 2020, either current or less than 30 days past due. The commenter noted that delinquency status was not a factor in section 4022 of the CARES Act as to

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<sup>4</sup> See 12 U.S.C. 1715u(b)(2)(A); see also 42 U.S.C. 1472(h)(14)(A).

whether a borrower could request forbearance; therefore, “the Moral and Ethical right thing to do is to allow (ALL) Veterans experiencing mortgage financial hardships to take advantage of [the COVID-VAPCP].”

Another commenter referred to the delinquency issue in response to one of VA’s specific questions: whether information collected as part of a complete loss-mitigation evaluation would be adequate to evaluate a borrower’s residual income under 38 CFR 36.4340(e).<sup>5</sup> The commenter suggested that VA require minimal documentation from veterans with loans that were delinquent on March 1, 2020. The commenter defined “minimal documentation” as proof of 30 days of income and an acceptable housing debt-to-income ratio. Regarding borrowers with loans that were, on March 1, 2020, current or less than 30 days past due, the commenter recommended VA require no documentation.

*VA Response:* While VA is committed to ensuring that assistance under this temporary program is widely available to veterans, VA declines to expand coverage to include loans that were not current or less than 30 days past due on March 1, 2020. As discussed in the proposed rule, the COVID-VAPCP is designed to be a temporary assistance program that provides a “soft landing” for veterans who, but for the COVID-19 national emergency, would not be having difficulty paying their mortgage.<sup>6</sup> To ensure that VA can target relief under the COVID-VAPCP to those veterans, VA believes it is necessary to maintain the requirement that the status of the loan on March 1, 2020, the date the COVID-19 national emergency became effective, be current or less than 30 days past due.

VA acknowledges that many veterans who were experiencing financial hardship pre-pandemic continued to experience hardship and that, in some

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<sup>5</sup> See question 2, 85 FR 79142, 79153 (Dec. 9, 2020).

<sup>6</sup> 85 FR 79142 (Dec. 9, 2020).

cases, their hardship may have worsened as a result of the pandemic. VA has provided alternative approaches to assist such veterans in retaining their homes. These include relaxed regulatory requirements to help veterans whose loans were already delinquent take advantage of historically low interest rates and refinance their mortgage, often times with a lower, more affordable, monthly mortgage payment.<sup>7</sup> VA also issued guidance authorizing servicers to consider other VA home retention options.<sup>8</sup> Finally, VA temporarily waived regulatory requirements prohibiting balloon payments to enable servicers to offer deferment as another home retention option for veterans exiting forbearance.<sup>9</sup>

#### *D. Partial Claim Payment as Last Resort (38 CFR 36.4804)*

Five commenters, including the joint trade and consumer group, expressed confusion with VA's proposal that servicers treat the partial claim payment as a last resort and recommended changes in the final rule. Several commenters requested that VA clarify where the partial claim payment fell in a "waterfall" of home retention options. Two commenters noted that it was not clear from VA's proposed rule how servicers would know that the partial claim was being offered as a last resort. In this regard, the commenters pointed to language in the proposed rule that suggested a servicer may elect to utilize the partial claim even if the veteran qualifies for a loan modification. Three commenters, including the two just mentioned, felt that a partial claim payment should be evaluated on equal footing with other home retention options, consistent with

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<sup>7</sup> VA Circular 26-20-25. *Impact of CARES Act Forbearance on VA Purchase and Refinance Transactions*, (June 30, 2020), [https://vbaw.vba.va.gov/HOMELOANS/docs/hot\\_topics/26-20-25.pdf](https://vbaw.vba.va.gov/HOMELOANS/docs/hot_topics/26-20-25.pdf).

<sup>8</sup> VA Circular 26-20-12. *Extended Relief Under the CARES Act for those Affected by COVID-19*, (Apr. 8, 2020), [https://www.benefits.va.gov/HOMELOANS/documents/circulars/26\\_20\\_12.pdf](https://www.benefits.va.gov/HOMELOANS/documents/circulars/26_20_12.pdf).

<sup>9</sup> VA Circular 26-20-33. *Deferment as a COVID-19 Loss Mitigation Option for CARES Act Forbearance Cases*, (Sept. 14, 2020), [https://www.benefits.va.gov/HOMELOANS/documents/circulars/26\\_20\\_33.pdf](https://www.benefits.va.gov/HOMELOANS/documents/circulars/26_20_33.pdf).

current VA servicing policies, and be utilized when “clearly in [the veteran’s] best financial interest.”

One commenter noted that it was not clear whether proposed language referencing “all possible loss-mitigation options” included the deferment loss-mitigation option referenced by VA Circular 26-20-33.<sup>10</sup> The commenter requested that VA clarify in the final rule whether deferment was to be considered before a partial claim payment. Another commenter was concerned that it was unclear from the proposed rule whether a servicer may refuse to offer a partial claim payment if a veteran specifically requested it and the servicer determined another loss mitigation option was available. Finally, one commenter recommended that VA follow FHA and offer a streamlined partial claim option as the first step in a waterfall of foreclosure alternatives.

*VA Response:* VA has determined that changes in the final rule are necessary to clarify how VA expects servicers to offer the COVID-VAPCP. VA also agrees that referencing the partial claim payment option as a last resort might lead to an unintended restriction on program participation.

Generally, VA expects servicers to provide veterans with home retention options that are in the veteran’s financial interest. To ensure that VA can assist as many veterans as possible in retaining their homes and recovering from the pandemic, VA is modifying the final rule such that the COVID-VAPCP will no longer be characterized as an option of last resort.

Commenters correctly noted that VA has a longstanding history of not prescribing a required “waterfall” of home retention options. VA has instead advised of VA’s preferred order of consideration for standard home retention

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<sup>10</sup> VA Circular 26-20-33. *Deferment as a COVID-19 Loss Mitigation Option for CARES Act Forbearance Cases*, (Sept. 14, 2020), [https://vbaw.vba.va.gov/HOMELOANS/docs/hot\\_topics/26\\_20\\_33.pdf](https://vbaw.vba.va.gov/HOMELOANS/docs/hot_topics/26_20_33.pdf).

options.<sup>11</sup> As explained in the proposed rule, one reason supporting this policy is that, in VA's program, lenders, servicers, or other entities that own the loan (loan holders) often bear significantly more financial risk than the Government.<sup>12</sup> Also, VA recognizes that individual circumstances may lead to "out of the ordinary" considerations.<sup>13</sup>

In keeping with this longstanding policy, VA declines to require servicers to offer a partial claim payment to veterans, particularly as part of a prescribed waterfall of home retention options. At this stage, VA does not have enough information to warrant the dismantling of a model that achieved one of the lowest foreclosure rates on the market for most of the past decade (even with most veterans not making a down payment). VA is also concerned that mandating the partial claim option could increase upfront costs for some servicers, which could in turn impede them from helping the veterans they would otherwise be able to serve. VA understands this approach may differ from both FHA's and USDA's partial claim programs, but VA also notes that those agencies and their servicers have been working with more prescriptive waterfalls for quite some time, as servicers have less "skin-in-the-game" in those agencies' programs than they do in VA's.

VA is amending the final rule to clarify that a servicer may consider a partial claim option in the same way that a servicer may consider any of VA's other home retention options. VA is also adopting changes to the final rule to clarify that servicers may elect to offer the partial claim payment instead of other options. While VA's amendments promote a more streamlined application process, VA wants to ensure that servicers are still keeping veterans' financial

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<sup>11</sup> 38 CFR 36.4319(a).

<sup>12</sup> 85 FR 79142, 79147 (Dec. 9, 2020).

<sup>13</sup> 38 CFR 36.4319(a).

interests in mind. Therefore, VA is also adopting changes to the final rule to remind servicers that the COVID-VAPCP should only be offered if the option is in the veteran's financial interest.

Servicers that participate in VA's home loan program have significant experience determining what home retention option(s) to consider and offer when assisting veterans whose loans are in default. Through the changes in this final rule, VA is empowering servicers to continue making decisions that align with both veterans' interests and the capabilities of a servicer's business model. VA is dispensing with the last resort characterization and will not, for example, require servicers to keep a written record of the servicer's justification that the partial claim option was superior to each and every other home retention option. However, a servicer's decision to utilize the partial claim option will be subject to VA's oversight, audit, and review. Furthermore, and with consideration of commenters' reflections on home retention policies and the Great Recession, VA believes that it is crucial to allow servicers flexibility to use informed business judgment to determine whether a veteran is well suited for participation in the COVID-VAPCP, without the burdens of a formal evaluation or consideration process. As such, if a veteran exiting forbearance requests a partial claim payment, the servicer may be able to immediately proceed to executing the partial claim payment after determining that the veteran's case meets program requirements. Similarly, servicers will be able to evaluate their existing forbearance portfolios to determine whether the COVID-VAPCP can assist borrowers in bringing their loans current when the forbearance periods end.

To illustrate: A veteran is about to exit a 360-day COVID-19 forbearance period. In working with the veteran, the servicer learns that, but for having to repay the COVID indebtedness, the veteran's income would allow the veteran to



return to the normal monthly payment. Assuming there were no other prohibitive aspects of the case, the COVID-VAPCP would seem to be in the veteran's financial interest. VA would not expect the servicer to expend resources on evaluating all other home retention options, solely to determine that the COVID-VAPCP was the option of last resort. Similarly, because the COVID-VAPCP would be in the veteran's financial interest, offering a loan modification to "see how things go" would likely not be the optimal outcome for the veteran because even if the modification succeeds, the COVID-19 indebtedness would be capitalized into the loan modification, resulting in thousands of dollars of additional interest being charged to the veteran.

If, however, the servicer learns at the outset that a veteran's income could no longer support a return to the monthly payment, even with the COVID-VAPCP assistance covering the COVID-19 indebtedness, it could be difficult to show how offering the COVID-VAPCP would be in the veteran's financial interest. This would be especially apparent if the veteran could retain the home through a modification to the interest rate and, for example, a principal reduction from the infusion of HAF<sup>14</sup> funds.

In other words, while VA has not prescribed a waterfall of home retention options, in cases where the servicer determines that the partial claim option is an optimal method, the servicer should pursue it, rather than another option. This will help shield the veteran from delaying the veteran's financial recovery and help prevent the expensive and labor-intensive burdens that could be posed by an unnecessary series of home retention strategies.

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<sup>14</sup> HAF is the Homeowner Assistance Fund, which provides States with funding to provide relief to our country's most vulnerable homeowners. For more information, visit <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/homeowner-assistance-fund> (last accessed May 1, 2021).

In sum, VA's final rule clarifies that the COVID-VAPCP is available in cases where other home retention options are feasible, ensures a more streamlined application process, and provides flexibility such that servicers can implement home retention options that fit within their business capabilities. VA believes that such changes are consistent with VA's longstanding servicing regulations and policies and will enable more borrowers to utilize this temporary assistance program while mitigating burdens to veterans and servicers.

(NOTE: VA continues to explore ways to help veterans as they exit their COVID-19 forbearances and as foreclosure/eviction moratoriums end. VA expects the upcoming weeks to provide critical information in evaluating the COVID-VAPCP and additional measures to help veterans. In fact, VA anticipates additional rulemaking will be urgently necessary to keep pace with the evolving financial needs of veterans.)

#### *E. Expiration of the COVID-VAPCP (38 CFR 36.4809)*

Three commenters, including the joint trade and consumer group, did not agree with VA's proposed COVID-VAPCP expiration date of September 9, 2021. All three commenters noted that current information suggests that many veterans will remain in forbearance beyond September 9, 2021. The commenters suggested that if VA does not extend the sunset date, such borrowers would not be able to receive assistance. Commenters recommended that VA consider changes to the final rule that would ensure all veterans who enter a COVID-19 forbearance can take advantage of the program. One commenter specifically requested that VA commit to accepting partial claim requests for at least 15 months beyond the date the COVID-19 national emergency ends. The commenter noted that this timeline would allow veterans to utilize up to 12 months of forbearance and provide an additional 90 days to complete the

paperwork required for a partial claim. This commenter also requested that VA consider changing the permissive language in proposed § 36.4809(b) from “the Secretary may still accept a request for a partial claim payment” to “the Secretary shall accept a request for a partial claim payment,” thereby requiring the Secretary to accept a request within 90 days of a veteran exiting a COVID-19 forbearance.

*VA Response:* VA agrees in part. VA believes that the permissive element of proposed § 36.4809(b) should instead be mandatory upon the Secretary. If the COVID-19 national emergency ends while a veteran is under a COVID-19 forbearance, the permissive language in the proposed rule could lead the veteran to question whether it is necessary to cut short the forbearance period in order to take advantage of the COVID-VAPCP. This is not an outcome VA intended. Accordingly, VA has revised this final rule to require the Secretary to accept a request for a partial claim payment if it is submitted timely.

VA notes that acceptance of a request for a partial claim payment is not synonymous with approval of that request. Thus, this change only requires the Secretary to accept, but not necessarily approve, a request that is received before the requisite deadline. In other words, even though this final rule prohibits the Secretary from refusing to consider a request that is submitted before the deadline, timely submission is not tantamount to approval.

VA also agrees with commenters that the September 9, 2021 sunset date should be extended, given the potential for COVID-19 forbearances extending beyond that date. VA is adjusting the sunset date in the final rule to align with the expectation that no veteran will be in a COVID-19 forbearance after June 30, 2022.

On February 16, 2021, VA published guidance stating that VA expects servicers to approve initial COVID-19 forbearances if the request is made on or before June 30, 2021. VA's guidance also stated that certain COVID-19 forbearance periods may extend through June 30, 2022. Additionally, the guidance stated that VA expects that, if needed, a veteran may request, and the servicer will approve, up to two additional three-month forbearance periods, after twelve months of COVID-19 forbearance.<sup>15</sup> VA also stated that neither of the two additional three-month forbearance periods may extend beyond December 31, 2021. These timeframes align with both FHA's and USDA's COVID-19 forbearance guidance.<sup>16</sup>

Considering the factors mentioned above, and that VA is extending the timeframe during which a servicer can request a partial claim payment from 90 days to 120 days post-forbearance (as explained below), this final rule notice sets a new sunset date of October 28, 2022. In establishing this date, VA notes that June 30, 2022 is the last date on which VA expects a veteran to exit a COVID-19 forbearance. Given that a servicer will now have 120 days from the date a veteran exits a COVID-19 forbearance to request a partial claim, October 28, 2022 will be the deadline for servicers to request a partial claim. VA notes that if there are additional extensions of forbearance periods in VA's home loan programs, VA may consider a new rulemaking to adjust the sunset date.

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<sup>15</sup> VA Circular 26-21-04. *Approving Forbearance Requests for Veterans Affected by COVID-19*, (Feb. 16, 2021), [https://www.benefits.va.gov/HOMELoANS/documents/circulars/26\\_21\\_04.pdf](https://www.benefits.va.gov/HOMELoANS/documents/circulars/26_21_04.pdf).

<sup>16</sup> See HUD Mortgagee Letter 2021-05. *Extensions of Single Family Foreclosure and Eviction Moratorium, Start Date of COVID-19 Initial Forbearance, and HECM Extension Period; Expansion of COVID-19 Loss Mitigation Options*, (Feb. 16, 2021), <https://www.hud.gov/sites/dfiles/OCHCO/documents/2021-05hsgml.pdf>. See also USDA *Extends Evictions and Foreclosure Moratorium to June 30, 2021 and Provides Additional Guidance for Servicing Loans Impacted by COVID-19*, (Feb. 16, 2021), <https://www.usda.gov/media/press-releases/2021/02/16/biden-administration-announces-another-foreclosure-moratorium-and>.

VA does not agree at this time to commit to accepting partial claim requests for at least 15 months beyond the date the COVID-19 national emergency ends. As the proposed rule explained, the COVID-VAPCP is intended as a temporary program.<sup>17</sup> Thus, it is reasonable for VA to set a program sunset date that, at the time of this writing, aligns with federal guidance signaling that COVID-19 forbearances should end by June 30, 2022. Also under that guidance, servicers must assist veterans in bringing their loans current as they exit COVID-19 forbearances. While VA, the servicer, and the veteran may undertake certain actions after the 120-day deadline, the servicer will need to make a decision about what home retention option is in the veteran's financial interest close to the time when the veteran's forbearance ends. Such actions will be necessary to assist veterans regardless of whether the COVID-19 national emergency is still in effect.

*F. 90-Day Timeline to Submit Partial Claim Payment Request (38 CFR 36.4805(a))*

In the proposed rule, VA requested comments as to whether “the servicer’s 90-day deadline as proposed by § 36.4805 to submit the request for partial claim payment [is] reasonable.”<sup>18</sup> VA also requested comments on whether there is a more reasonable timeframe.

Only three commenters specifically responded to VA’s question. One commenter suggested that servicers should be given 12 months after the end of the COVID-19 national emergency within which to complete an evaluation of the veteran’s post-forbearance options and submit a request for partial claim payment. The commenter noted that servicers will need “unquantifiable additional

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<sup>17</sup> 85 FR 79142 (Dec. 9, 2020).

<sup>18</sup> 85 FR 79142, 79154 (Dec. 9, 2020).

time and resources” to address the significant numbers of borrowers exiting forbearance in 2021 and that time would be needed to “engage in thoughtful review of every individual’s financial situation and identify the most suitable path to cure.”

Another commenter indicated that a longer time period could be necessary due to unforeseen delays in communicating with the veteran or in trying other loss-mitigation options first, such as a trial loan modification. In consideration of these realities, the commenter suggested that VA require servicers to request a partial claim “90 days from the final loss mitigation option being fully evaluated prior to consideration of COVID-VAPCP.”

The third commenter indicated that the 90-day timeframe was too short considering the burdens associated with the financial evaluation and additional paperwork and certifications. The commenter suggested that 180 days was more reasonable, especially if VA chose not to streamline the COVID-VAPCP to mirror FHA’s less burdensome program.

Additionally, other commenters communicated general concerns with the significant operational costs and delay associated with executing VA’s proposed rule. As previously discussed, several commenters were concerned that participating in the COVID-VAPCP was, in most cases, more work for servicers than other traditional VA home retention options. Such comments did not specifically address or mention VA’s proposed 90-day timeframe for servicers to execute and submit a request for partial claim payment. However, the commenters implied that VA’s timeframe was not feasible given the increased burden associated with the COVID-VAPCP.

*VA Response:* VA agrees in part and is adjusting the requirement that servicers execute and submit a request for partial claim payment. Rather than

the requirement being not later than 90 days after the veteran exits the COVID-19 forbearance, VA is extending it to not later than 120 days after the veteran exits the COVID-19 forbearance. FHA recently increased from 90 days to 120 days the timeframe in which a servicer must complete a partial claim option for borrowers affected by COVID-19.<sup>19</sup> Because VA has streamlined the process to align more squarely with FHA, VA believes that servicers should have a similar timeframe to request a partial claim payment from VA.

As to the suggestion that VA should allow servicers to submit a request for up to 12 months after the national emergency ends, VA believes that the end of the veteran's forbearance period, as opposed to the end of the national emergency, is the more appropriate starting point. As mentioned above, VA believes the key is to act quickly for veterans who are exiting their COVID-19 forbearances. Moreover, VA acknowledges that servicers will be processing many cases where borrowers exit forbearance in the coming year. This upcoming influx of cases is one of the primary reasons that VA is streamlining the COVID-VAPCP process. VA believes that streamlining the process will lessen servicers' workload in evaluating, executing, and requesting a partial claim payment.

Regarding the comment that VA start the 90-day period from the date the servicer evaluates "the final loss mitigation option...[before] consideration of [the] COVID-VAPCP," it appears that the commenter may have understood the proposed rulemaking's last resort characterization as a requirement that

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<sup>19</sup> See HUD Mortgagee Letter 2021-05. *Extension of Single Family Foreclosure and Eviction Moratorium, Start Date of COVID-19 Initial Forbearance, and HECM Extension Period; Expansion of COVID-19 Loss Mitigation Options*, (Feb. 16, 2021), <https://www.hud.gov/sites/dfiles/OCHCO/documents/2021-05hsgml.pdf>.

servicers should attempt several home retention options (and that all such options must fail) before servicers can resort to the COVID-VAPCP.<sup>20</sup>

VA did not intend to imply that servicers should test other home retention options and only arrive at the COVID-VAPCP if such measures fail. Regardless, as explained in this final rule notice, VA is extending the submission timeframe (from 90 to 120 days) and is eliminating the last resort characterization, allowing instead for servicers to consider a partial claim option in the same way a servicer may consider any of VA's other home retention options. VA believes these changes have addressed the commenter's concerns.

#### *G. Taxes and Insurance Premiums (38 CFR 36.4805)*

In the proposed rule, VA requested comments regarding VA's proposal to limit inclusion of taxes and/or insurance amounts due and paid by the servicer, on the veteran's behalf, in the case of a veteran who pays real estate taxes and/or insurance premiums directly to a tax authority or insurance provider.<sup>21</sup> VA expressed interest in determining whether the partial claim payment should include amounts corresponding to what will be due for such items, where the bills were not due and payable during the COVID-19 forbearance. VA also sought input regarding how best to calculate and disburse such amounts, as well as how to conduct oversight to ensure the monies were directed to the appropriate tax authority or insurance provider.

VA received three comments related to the issue of real estate tax and insurance payments. One commenter supported VA's proposal to include in the partial claim amount certain scheduled but missed monthly escrow payments for

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<sup>20</sup> The commenter explained that, "...some options could require a borrower to make trial payments for a 90-day period before finalizing a modification." If the servicer must wait out the trial period to ensure that the COVID-VAPCP is indeed the option of last resort, it places "both the Veteran and the servicer in a difficult situation."

<sup>21</sup> See 85 FR 79142, 79154 (Dec. 9, 2020).



real estate taxes and insurance premiums, noting that such a policy was also consistent with FHA's COVID-19 Standalone Partial Claim. The commenter did not specifically address whether VA should include scheduled but missed real estate taxes and insurance premiums in cases where the guaranteed loan documents do not provide for monthly escrowing.

Another commenter suggested that, if the veteran has remitted timely payments of real estate taxes and/or property insurance premiums directly to the tax authority and insurance provider, the partial claim payment should only include principal and interest. However, the commenter recommended that, if the veteran fell behind on such payments or such payments were not due during the forbearance period, the partial claim payment should include such real estate taxes and insurance premiums, or a pro rata portion of such amounts. The commenter further recommended that VA create an escrow account for holding and disbursing these funds on behalf of the veteran "in a manner that complies with the provisions of RESPA's implementing Regulation X."

A third commenter, acknowledged that "only a small percentage of Veteran homeowners directly pay taxes and insurance." However, to account for these cases, the commenter recommended that prorated amounts for missed taxes and insurance premiums should be included in the partial claim payment regardless of whether the servicer remitted payment on the veteran's behalf during the COVID-19 forbearance. The commenter also opined that requiring the servicer to manage a temporary escrow account for such unpaid items would be too complex. The commenter suggested that the funds should instead be sent directly to veterans, provided that the veterans sign a document acknowledging that the funds are to be used to satisfy the delinquent taxes and insurance premiums.

*VA Response:* The varied responses to VA's question demonstrate the complexities associated with assisting veterans who do not utilize an escrow account to pay real estate taxes and/or insurance premiums. After considering the comments received, and given that less than one percent of guaranteed loans do not provide for escrowing, VA declines to change how the partial claim payment will be calculated in the final rule. VA believes that implementing a requirement for temporary escrow accounts would be overly burdensome when measured against the nominal improvement such a provision would bring to the COVID-VAPCP. VA is concerned that the burden associated with establishing, maintaining, adjusting, and closing temporary escrow accounts, would discourage servicers from participating in the program. VA believes that such a requirement is not necessary to help veterans whose loan documents do not provide for escrowing because the final rule still requires servicers to include amounts the servicer advanced on the veteran's behalf. VA is also concerned that requiring veterans to receive and then redirect such funds to tax authorities and insurance providers would place an undue burden on veterans who may already be facing challenges on several fronts due to the pandemic. Such a policy would also raise a significant risk of delay, confusion, and error.

As mentioned, the final rule retains the requirement that, where the guaranteed loan documents do not provide for monthly escrowing, servicers must include all payments the servicer made to real estate tax authorities and insurance providers, on the veteran's behalf during the COVID-19 forbearance. Additionally, in cases of veterans who do pay taxes and insurance premiums through an escrow account, servicers must still include all scheduled but missed monthly escrow payments in the partial claim.

*H. Inclusion of Payments Due Within 31 Days (38 CFR 36.4805(e))*

One commenter recommended that VA remove the requirement in proposed 38 CFR 36.4805(e) whereby servicers must include scheduled monthly payments that are due within 31 days of the date the veteran executes the note and security instrument. The commenter noted that 31 days was insufficient based on experience in FHA's partial claim program. The commenter noted that servicers have limited control over when the veteran executes the note and security instrument, as well as when the veteran returns such items to the servicer.

*VA Response:* VA acknowledges the commenter's concern but is uncertain how eliminating the 31-day timeframe would assist borrowers and servicers. In proposing to require such amounts be included in the partial claim payment, VA sought to avoid cases where veterans are asked to make a mortgage payment only days after executing the note and security instrument.

Nevertheless, VA does understand that servicers face difficulty in preparing and delivering a note that contains the correct partial claim amount, when the servicer has no control over when the veteran executes the note. If the veteran was unable to sign the note before a certain number of days passed, under VA's proposed rule, the servicer could be required to waive, for example, the first mortgage payment that would have been due when the veteran returns to normal repayment.

To address this concern, VA is adopting changes in the final rule to require servicers to include all scheduled monthly payments (comprising principal, interest, and escrow payments for real estate taxes and insurance premiums) due within 31 days of the date the servicer provides to the veteran the note and security instrument described in § 36.4806. This will ensure that the

servicer can include the correct partial claim payment amount on the note and security instrument.

Similarly, VA is amending the requirement at 38 CFR 36.4807(c) that servicers report a partial claim event to VA through VA's existing electronic loan servicing system within seven days of the borrower's execution of the note. Since the servicer may not know the exact date the note is executed, VA will instead require the servicer to report the partial claim event to VA within seven days of the date the veteran returns the executed note to the servicer, but not later than 90 days after the date the veteran exits the COVID-19 forbearance.

#### *I. Servicer Incentives*

Two commenters requested that VA consider including a servicer incentive for executing a partial claim payment. One commenter noted that servicers will lose servicing fee revenue as a result of the partial claim payment, while undertaking additional servicing responsibilities in the form of additional certifications and financial evaluations in advance of completing the partial claim payment. Another commenter wrote that executing the partial claim payment will likely be more work for servicers than the other five servicer actions for which VA already pays incentives pursuant to 38 CFR 36.4319. That commenter also recommended that VA pay an incentive equivalent to a loan modification under § 36.4319 as the work required to execute a partial claim payment corresponded closely to the work required to execute a loan modification.

*VA Response:* VA does not agree with the commenters that a servicer incentive is needed for the COVID-VAPCP. As discussed above, this final rule makes several improvements and streamlines the partial claim process. More salient, the partial claim payment itself should constitute a significant infusion of liquid cash to the servicers that participate. This immediate cash infusion can be

used to help participating servicers cover their short-term obligations. It also affords these servicers the opportunity to take advantage of the time value of money; without the partial claim payment, certain servicers may need to wait years, or perhaps decades, to receive repayment of forborne amounts. Given the scope of the pandemic, some servicers might never be repaid the forborne amounts without the COVID-VAPCP, and indeed, a servicer's refusal to participate in the COVID-VAPCP could cause the servicer a foreclosure loss that could have easily been avoided by taking advantage of the COVID-VAPCP option. VA believes that this significant financial support already poses enough incentive to servicers. VA also believes that FHA's COVID-19 Standalone Partial Claim option, which does not provide for incentives, further evidences that an incentive is not necessary to promote servicers' use of the COVID-VAPCP.

#### *J. Combined Deferral and Partial Claim Program*

One commenter recommended that VA consider offering a combined deferral and partial claim program. The commenter noted that offering a deferment consistent with VA Circular 26-20-33<sup>22</sup> presents, in many cases, the best option for both veteran and servicer, but, according to the commenter, the one limiting factor is whether a servicer has the financial capacity to defer the forborne payments for such an extended period. The commenter stated that this issue could be solved if servicers were able to receive a partial claim payment when a COVID-19 forbearance period ends.

*VA Response:* VA declines to modify the proposed rulemaking in this way. The COVID-VAPCP is a fundamental shift for all stakeholders in VA's home loan program. Moreover, as VA explained in the proposed rule, the authorization of

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<sup>22</sup> VA Circular 26-20-33. *Deferment as a COVID-19 Loss Mitigation Option for CARES Act Forbearance Cases*, (Sept. 14, 2020), [https://vbaw.vba.va.gov/HOMELOANS/docs/hot\\_topics/26\\_20\\_33.pdf](https://vbaw.vba.va.gov/HOMELOANS/docs/hot_topics/26_20_33.pdf).

loan deferment is a “novel home retention option,” one that, “[o]rdinarily, VA’s regulation at 38 CFR 36.4310(a) would prohibit.”<sup>23</sup> VA is being asked to change the position VA took in the proposed rulemaking when the proposed rule and VA’s temporary loan deferment policy already constitute significant changes within VA’s home loan program. Assuming VA were to do so, VA would likely need to insert new guardrails, which would require even further departure from what was proposed.

As mentioned above, VA is continuing to explore ways to help veterans as they exit their COVID-19 forbearances and as foreclosure/eviction moratoriums end. VA expects the upcoming weeks to provide critical information in evaluating the COVID-VAPCP and additional measures to help veterans. In fact, VA anticipates additional rulemaking could be necessary. Given the potential for another rulemaking in upcoming weeks, the concerns about departing too far from the proposed rule, and the immediate need to publish this final rule notice, VA is not making any changes to the rule based on this comment.

#### *K. Effect on Secondary Markets*

One commenter requested that VA address whether loans bought out of a Government National Mortgage Association (Ginnie Mae) security will be eligible for re-pooling once a veteran has resumed making payments and the servicer has otherwise complied with Ginnie Mae requirements. The commenter noted that the proposed rule states that a partial claim payment does not affect the guaranty percentage established at the time the guaranteed loan was made; thus, it was the commenter’s understanding that such loans will be eligible for re-pooling.

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<sup>23</sup> 85 FR 79142, 79145 (Dec. 9, 2020).

*VA Response:* VA notes that it does not set eligibility requirements for Ginnie Mae securities. Therefore, VA cannot state whether such loans will be eligible for re-pooling under the circumstances described by the commenter. However, VA reiterates<sup>24</sup> that a partial claim does not affect the guaranty percentage on the guaranteed loan. In other words, VA will not deduct the amount of any partial claim payment from any future guaranty claim. VA will continue to honor the requisite guaranty percentage established by existing law.<sup>25</sup>

#### *L. Other Comments*

One commenter posed several questions regarding refinance loans and future loan modifications. First, the commenter requested that VA clarify whether the security interest on the new loan can be subordinated to a VA-guaranteed Interest Rate Reduction Refinancing Loan (IRRRL). The commenter also asked that VA clarify whether the new loan can be paid off through an IRRRL. Finally, the commenter requested that VA advise whether the new loan can be paid off through a subsequent loan modification of the VA-guaranteed loan.

*VA Response:* VA notes that under both the proposed and final rules, repayment in full will be required immediately upon the refinancing or payment in full otherwise of the guaranteed loan with which the partial claim payment is associated. As such, there is no instance in which the new loan created under the COVID-VAPCP would continue to exist after the veteran refinances through an IRRRL. A veteran seeking to refinance with an IRRRL will be required to repay the new COVID-VAPCP loan in full, meaning the lien subordination issue raised by the commenter should not arise in such cases. However, VA reminds

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<sup>24</sup> See 85 FR 79142, 79152 (Dec. 9, 2020).

<sup>25</sup> See, for example, 38 U.S.C. 3703 and 3732.

servicers that the guaranteed loan must remain in first lien position.<sup>26</sup> Similarly, under the plain text of 38 U.S.C. 3710(e)(1)(C), a COVID-VAPCP loan would be excluded from the balance that could be refinanced as an IRRRL.<sup>27</sup> Finally, the new COVID-VAPCP loan cannot be paid off through a loan modification of the guaranteed loan. Nevertheless, since a loan modification is neither a refinance nor payment-in-full of the guaranteed loan, the new COVID-VAPCP loan would continue in effect, after modification of the guaranteed loan.

Another commenter encouraged VA to expedite use of the COVID-VAPCP outside of finalizing the proposed rule. The commenter suggested VA utilize its Circular process to offer this home retention option.

*VA Response:* VA agrees with the commenter that swift implementation of the COVID-VAPCP is necessary. However, VA believes that consideration of public comments is crucial to ensure that the program is tailored to meet veterans' needs. VA has worked to finalize this rule as quickly as possible and, as discussed further below, is setting an effective date in consideration of the fact that veterans now have increased opportunities to receive COVID-19 forbearances and that servicers will require some lead time to prepare for implementation.

Finally, VA received two comments regarding existing home retention and loan servicing policies. One of these comments was that VA should clarify whether the VA option to purchase a guaranteed loan upon a borrower's default (a process VA commonly refers to as a loan refund<sup>28</sup>) occurs before a short sale or deed in lieu of foreclosure, or before a servicer initiates a foreclosure. Another

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<sup>26</sup> See 38 U.S.C. 3703(d)(3)(A).

<sup>27</sup> See 38 U.S.C. 3710(e)(1)(C) (prescribing that the amount of an IRRRL may not exceed an amount equal to the sum of the balance of the loan being refinanced, closing costs, and, if applicable, energy efficient improvements).

<sup>28</sup> 38 CFR 36.4320.



commenter suggested that VA revise a monthly payment reduction requirement associated with VA's Streamline Modification option.

*VA Response:* VA declines to respond to these comments as they are beyond the scope of this rule.

### **III. Clarifying Amendments to the Final Rule Based on Comments**

In addition to the changes discussed above, VA is adopting the following revisions to address technical issues that arose when considering comments.

#### *A. Definitions (38 CFR 36.4801)*

In the proposed rule, VA proposed a definition of “CARES Act forbearance” to mean forbearance of scheduled monthly guaranteed loan payments, as granted to a veteran under section 4022 of the Coronavirus Aid, Relief, and Economic Security Act (Pub. L. 116-136). At that time, VA only referenced forbearance periods granted to a veteran under section 4022 of the CARES Act.

The purpose of the COVID-VAPCP was not to limit assistance to the protections afforded under the CARES Act, but instead to establish a temporary program to help veterans who are experiencing financial hardship due, directly or indirectly, to the COVID-19 national emergency.<sup>29</sup> As noted above, the COVID-19 national emergency has now entered its second year. In consideration of the fact that the pandemic has imposed a prolonged financial hardship for many individuals, VA has been part of the coordinated federal response that extends protections for borrowers with federally backed mortgages.<sup>30</sup> For example,

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<sup>29</sup> “VA proposes to initiate a temporary program that would establish a partial claim option to aid veterans who suffer financial hardship due to COVID-19.” 85 FR 79142 (Dec. 9, 2020).

<sup>30</sup> See *Fact Sheet: Biden Administration Announces Extension of COVID-19 Forbearance and Foreclosure Protections for Homeowners*, (Feb. 16, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/16/fact-sheet-biden-administration-announces-extension-of-covid-19-forbearance-and-foreclosure-protections-for-homeowners/>. See also VA Circular 26-21-04, *Approving Forbearance Requests for Veterans Affected by COVID-19*, (Feb. 16, 2021), [https://www.benefits.va.gov/HOMELoANS/documents/circulars/26\\_21\\_04.pdf](https://www.benefits.va.gov/HOMELoANS/documents/circulars/26_21_04.pdf).

certain veterans can now receive COVID-19 forbearances that can remain in effect until as late as June 30, 2022. Additionally, certain veterans who may have already reached the end of their initial periods of forbearance can now receive up to two additional three-month COVID-19 forbearance periods, which can remain in effect until as late as December 31, 2021. To ensure it is clear that veterans who receive COVID-19 forbearances can take advantage of the COVID-VAPCP, VA is replacing the term “CARES Act forbearance” with “COVID-19 forbearance” and adding a sentence clarifying that this term can “include any forbearance of scheduled monthly guaranteed loan payments, granted to a veteran for a financial hardship due, directly or indirectly, to the COVID-19 national emergency.” For consistency, VA is also changing the term “CARES Act indebtedness” to “COVID-19 indebtedness” in the final rule. The definition remains unchanged but for replacing “CARES Act forbearance” with “COVID-19 forbearance”.

*B. Guaranteed Loans Made On or After March 1, 2020 (38 CFR 36.4803(a))*

In the proposed rule, § 36.4803(a) stated that “[t]he loan for which a partial claim payment is requested must be a guaranteed loan that was, on March 1, 2020, either current or less than 30 days past due.” The implication could be that VA meant for the rule to exclude from the COVID-VAPCP veterans who obtained new guaranteed loans on or after March 1, 2020. This is not what VA intended. Therefore, to ensure that the text of the final rule leaves no doubt that such veterans can receive assistance under the COVID-VAPCP, VA is implementing a technical change to § 36.4803(a). The revised text now expressly allows veterans whose guaranteed loans were made on or after March 1, 2020 to receive COVID-VAPCP assistance, provided all other requirements are met.

*C. Additional Technical Edits (38 CFR 36.4805(e)(3)(ii) and (e)(4))*

In the proposed rule, § 36.4805(e)(3)(ii) stated that the servicer must include “if applicable, all scheduled monthly payments (comprising principal, interest, and escrow payments for real estate taxes and insurance premiums) that were missed after March 1, 2020, but before the veteran was granted the CARES Act forbearance”.<sup>31</sup> The purpose of this paragraph was to allow individuals who may have been late in requesting forbearance under the CARES Act, but nevertheless missed their guaranteed loan payment(s) due to circumstances related to the COVID-19 national emergency, to include such amounts in the partial claim, provided the guaranteed loan was current or less than 30 days past due on March 1, 2020.<sup>32</sup>

VA is amending this section in the final rule to add “on or” before the phrase “after March 1, 2020”. VA believes this technical change is necessary because most mortgage payments are due on the first of each month, meaning the original text might have inadvertently excluded a payment that a veteran missed on March 1, 2020. This revision will also promote consistency with the final version of § 36.4803(a)(1), which limits the program, in relevant part, to cases where the guaranteed loan was current or less than 30 days past due on March 1, 2020. Moreover, VA believes that because the COVID-VAPCP is designed to mitigate the effects of the COVID-19 national emergency, which is effective as of March 1, 2020, it is prudent to allow for the possibility that a payment missed on that date could be included in the partial claim amount.

The need for this technical amendment is even clearer when considering that the CARES Act was signed into law by the President on March 27, 2020. It is highly likely that some veterans had already been affected by the pandemic on

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<sup>31</sup> 85 FR 79142, 79160 (Dec. 9, 2020).

<sup>32</sup> See 85 FR 79142, 79150 (Dec. 9, 2020).

March 1, 2020, and thus could not make their mortgage payment. Such veterans may not have called their servicer to request a COVID-19 forbearance until, for example, April 1, 2020, that is, the date the April payment was due. In such cases, the guaranteed loans would have been less than 30 days past due on March 1, 2020. However, the text of the proposed rule would have prohibited servicers from including such a payment because it was missed on March 1, 2020 not “after March 1, 2020.”<sup>33</sup>

In § 36.4805(e)(4), VA is replacing the term “borrower” with the term “veteran” to remain consistent with other sections in Subpart F. With the exception of references that include co-borrowers or non-borrowers who may hold title to the property, VA’s intention is to use the term “veteran” throughout.

#### **IV. Section-by-Section Analysis of the Final Regulatory Amendments**

As discussed in the proposed rule, the COVID-VAPCP is a temporary program to help veterans return to making normal loan payments on their guaranteed loans after exiting a COVID-19 forbearance period.<sup>34</sup> The proposed rule further noted that VA’s existing home retention, loss-mitigation, alternatives to foreclosure, and other servicing regulations and policies remain in effect.<sup>35</sup> Thus, to avoid confusion, VA is adding a new subpart F to part 36 of the Code of Federal Regulations (CFR) to contain the regulations that govern this temporary program.<sup>36</sup>

The following outlines the new subpart F, as prescribed under this final rule, with further explanation of each individual section, as appropriate.

##### ***A. § 36.4800 Applicability***

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<sup>33</sup> See 85 FR 79142, 79160 (Dec. 9, 2020) (emphasis added).

<sup>34</sup> See 85 FR 79142 (Dec. 9, 2020).

<sup>35</sup> 85 FR 79142, 79148 (Dec. 9, 2020).

<sup>36</sup> 85 FR 79142 (Dec. 9, 2020).

In § 36.4800, VA notes that this subpart applies to all loans guaranteed by VA, to the extent such loans are affected by the COVID-19 national emergency.

There is no change from the proposed rule to this section.

*B. § 36.4801 Definitions*

In § 36.4801, VA sets forth the definitions applicable to new subpart F.

VA defines “alternative to foreclosure”, “COVID-19 forbearance”, “COVID-19 indebtedness”, “Guaranteed loan”, “Loss-mitigation option”, “Secretary”, and “Servicer” as set out in the regulatory text below.

Changes in this section replace certain references to the CARES Act with COVID-19. These changes align the scope of the COVID-VAPCP with the coordinated federal response to veterans’ prolonged financial hardship, as discussed in section III.A. above.

*C. § 36.4802 General purpose of the COVID-19 Veterans Assistance Partial Claim Payment program*

In § 36.4802, VA sets forth the general purpose of the COVID-VAPCP. Intending to provide some introductory context for this novel option within VA’s home loan program, VA states that the COVID-VAPCP is a temporary program to help veterans who have suffered a COVID-19 financial hardship.

Notwithstanding the requirements elsewhere in part 36 regarding payment of a guaranty claim or refunding a loan, this section allows VA to assist a veteran exiting a COVID-19 forbearance by purchasing from the servicer the veteran’s COVID-19 indebtedness. Such a purchase is called a partial claim payment. In exchange for VA’s partial claim payment on behalf of the veteran, the veteran must agree to repay the Secretary, in the amount of such partial claim payment, upon loan terms established by the Secretary.

The only changes to this section from the proposed rule include conforming amendments associated with the definitional changes in § 36.4801. See section IV.B. above.

*D. § 36.4803 General requirements of the COVID-19 Veterans Assistance Partial Claim Payment program*

In § 36.4803, VA sets forth the general requirements of the COVID-VAPCP. First, VA requires that the loan for which a partial claim payment is requested must be a guaranteed loan that was either current or less than 30 days past due on March 1, 2020, or was made on or after March 1, 2020. Second, VA requires that the veteran on whose behalf VA will pay a partial claim payment both received a COVID-19 forbearance and missed at least one scheduled monthly payment. Third, VA requires that there remains unpaid at least one scheduled monthly payment that the veteran did not make while under a COVID-19 forbearance. Fourth, VA requires the veteran to indicate that the veteran can resume making scheduled monthly payments, on time and in full, and that the veteran occupies, as the veteran's residence, the property securing the guaranteed loan for which the partial claim is requested. Lastly, VA requires the veteran to execute, in a timely manner, all loan documents necessary to establish an obligation to repay the Secretary for the partial claim payment.

This section incorporates changes VA is making in response to commenter concerns about the COVID-VAPCP evaluation and application process. As discussed in section II of this final rule, veterans must only indicate, not certify, as to their ability to resume making scheduled monthly payments and their occupancy of the property securing the guaranteed loan. Similarly, servicers are not required to certify as to the adequacy of the veteran's monthly residual income based on a financial evaluation. Also, in response to comments

discussed above, VA is clarifying that the final rule expressly allows veterans whose loans were made on or after March 1, 2020 to receive assistance, provided all other requirements are met. See section III.B. above. VA is also making conforming amendments associated with the definitional changes in § 36.4801. See section IV.B. above.

*E. § 36.4804 Partial claim payment as a home retention option*

In § 36.4804, VA reiterates that the COVID-VAPCP is designed to address the financial hardships due, directly or indirectly, to the COVID-19 national emergency. This section states that a servicer may therefore use the partial claim payment option, even in cases where other home retention options are feasible, provided the partial claim payment option is in the veteran's financial interest. This section also allows the servicer to immediately proceed to offering an alternative to foreclosure if the veteran notifies the servicer that the veteran does not want to retain ownership of the property securing the guaranteed loan.

Changes in this section, including changes to the section heading, are in response to commenter concerns as discussed in section II.D. above.

*F. § 36.4805 Terms of the partial claim payment*

In § 36.4805, VA sets forth the terms of the partial claim payment. In paragraph (a), in order for a partial claim payment to be payable, the servicer must submit to the Secretary, not later than 120 days after the date the veteran exits the COVID-19 forbearance, a request for such payment, as prescribed in § 36.4807. Paragraph (b) of this section states that the amount of the partial claim payment that VA will pay to the servicer, as calculated under paragraph (e), shall not exceed 30 percent of the unpaid principal balance of the guaranteed loan. For the purposes of paragraph (b), the unpaid principal balance of the guaranteed loan means such balance as of the date the veteran entered into a

COVID-19 forbearance. Paragraph (c) states that VA will pay only one partial claim payment per guaranteed loan. Paragraph (d) states that VA will pay only one partial claim payment per veteran.

In paragraph (e)(1), VA states that because VA will pay only one partial claim payment per guaranteed loan, and only one partial claim payment per veteran, a servicer must, when calculating the amount of partial claim payment to be paid by VA to the servicer, include the full amount of indebtedness that is necessary to bring the guaranteed loan current. In paragraph (e)(2), VA states that to bring the guaranteed loan current, servicers must include the full COVID-19 indebtedness, comprising (i) all scheduled but missed monthly payments of principal and interest; and (ii) as applicable, all scheduled but missed monthly escrow payments for real estate taxes and insurance premiums, or where the guaranteed loan documents do not provide for monthly escrowing, all payments the servicer made to real estate tax authorities and insurance providers, on the veteran's behalf, during the COVID-19 forbearance.

In paragraph (e)(3)(i), VA requires servicers to include all scheduled monthly payments (comprising principal, interest, and escrow payments for real estate taxes and insurance premiums) due within 31 days of the date the servicer provides to the veteran the note and security instrument described in § 36.4806. VA notes that any such payment due within 31 days of such date may be considered part of the veteran's obligation to bring the guaranteed loan current. As such, VA is requiring servicers to include this amount in the partial claim payment.

In paragraph (e)(3)(ii), VA requires servicers to include, if applicable, all scheduled monthly payments (comprising principal, interest, and escrow payments for real estate taxes and insurance premiums) that were missed on or



after March 1, 2020, but before the veteran was granted a COVID-19 forbearance. As discussed in the notice of proposed rulemaking, VA included this feature to allow veterans who may have missed a payment before requesting forbearance, but who would otherwise meet the COVID-VAPCP requirements, to participate in the program.<sup>37</sup> In such cases, however, the servicer must waive any late charges and fees associated with these missed payments. Additionally, under paragraph (e)(3)(iii), VA requires servicers to include the actual amount of recording fees, recording taxes, or other charges levied by the recording authority that must be paid in order to record the security instrument described in § 36.4806.

In paragraph (e)(4), VA clarifies that servicers shall not include any amounts in the partial claim that are not listed by paragraph (e)(2) or (3). This means servicers cannot include any amounts (for example, fees, penalties, or interest) beyond the amounts scheduled or calculated as if the borrower made all contractual payments on time and in full under the terms of the guaranteed loan, or any late charges and fees that the veteran incurred between March 1, 2020, and the date the veteran entered the COVID-19 forbearance.

In paragraph (e)(5), VA states that nothing in § 36.4805 shall preclude a veteran from making an optional payment or a servicer from waiving a veteran's indebtedness, such that the amount of partial claim payment would not exceed the 30 percent cap described in paragraph (b).

In paragraph (e)(6), VA explains that if the servicer miscalculates the partial claim amount, resulting in an overpayment to the servicer, the amount of such overpayment shall constitute a liability of the servicer to the United States. The servicer will be required to remit the overpaid amount immediately to VA. In

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<sup>37</sup> 85 FR 79142, 79150 (Dec. 9, 2020).

paragraph (e)(7), VA states that if the servicer miscalculates the partial claim amount, resulting in underpayment (i.e., an amount insufficient to bring the guaranteed loan current), the servicer must waive the difference.

Finally, paragraph (e)(8) prohibits servicers from including any amounts for a monthly payment that is scheduled to be paid on a date that is more than 31 days after the servicer provides to the veteran the note and security instrument described in § 36.4806.

Under paragraph (f), the servicer is required to prepare a note and security instrument in favor of the “Secretary of Veterans Affairs, an Officer of the United States”. Using the “Department of Veterans Affairs” or the “United States” is incorrect. Furthermore, certain states have their own Departments of Veterans Affairs, and without the explicit distinction made here, confusion could result. Therefore, it is critical that the note and security instrument read in favor of the “Secretary of Veterans Affairs, an Officer of the United States”. In cases where state law requires naming a real person, this final rule notice allows servicers to include the name of the incumbent Secretary. These provisions are consistent with VA’s property conveyance rule found at 38 CFR 36.4323(d)(8).

VA requires that the note be consistent with the terms described in § 36.4806 and include all borrowers who are obligated on the guaranteed loan. The security instrument is also required to include all persons (borrowers, as well as non-borrowers) who hold a title interest in the property securing the guaranteed loan. In paragraph (g), subject to the requirement that the servicer submit the application for a partial claim payment to VA not later than 90 days after the date the veteran exits the COVID-19 forbearance, VA requires all loan documents to be fully executed not later than 90 days after the veteran exits the COVID-19 forbearance. Paragraph (h) requires the servicer to record the security

instrument timely, as prescribed in § 36.4807. Finally, in paragraph (i), the servicer is prevented from charging, or allowing to be charged, to the veteran any fee in connection with the COVID-VAPCP.

VA is making several changes to the final rule text in § 36.4805. First, there are technical conforming amendments in paragraphs (a), (b), (e)(2), (e)(2)(ii), (e)(3)(ii), and (g), related to definitional changes in § 36.4801. See section IV.B. above. VA is also incorporating a technical edit to paragraph (e)(4) that replaces “borrower” with “veteran” to remain consistent across Subpart F. See section III.C. above. In paragraph (e)(3)(ii), VA is revising the text to clarify VA’s intent that payments missed on March 1, 2020 can be included in the partial claim amount. See section III.C. above.

Also in response to comments discussed above, VA is amending paragraph (a) to reflect the adjustment to the timeframe in which servicers must request a partial claim payment from 90 days to 120 days, as discussed in section II.F. above. VA is also amending paragraphs (b) and (e)(5) to reflect the change in the maximum amount of available assistance, that is, from 15 percent of the UPB to 30 percent of the UPB. This change is discussed in more detail in section II.B.3. above.

Finally, VA is revising paragraph (e)(3)(i) such that the payments servicers must include in the partial claim amount will now be tied to the date the servicer provides the loan documents to the veteran, instead of the date the veteran executes such documents. As discussed in section III.H. above, this revision addresses industry concerns that servicers do not control when a veteran executes the note and security instrument, which increases the risk that servicers will miscalculate the partial claim payment amount. For example, under this final rule, a servicer that provides a COVID-VAPCP note and security instrument to a

veteran on June 15, 2021, must include the July 1, 2021 guaranteed loan payment in the partial claim payment amount, and the veteran will not need to make a guaranteed loan payment until August 1, 2021.

VA is also making a conforming amendment to paragraph (e)(8) to account for the revisions to paragraph (e)(3)(i). VA is also making technical drafting edits to paragraph (f) to clarify that “Secretary of Veterans Affairs, an Officer of the United States” should appear on the note and security instrument and that the name of the incumbent Secretary should not be included unless State law requires naming a real person.

*G. § 36.4806 Terms of the assistance to the veteran*

If a veteran chooses to accept VA’s assistance (i.e., a partial claim payment to the servicer, on the veteran’s behalf), the veteran, and all co-borrowers on the guaranteed loan, must execute a note and security instrument in favor of “the Secretary of Veterans Affairs, an Officer of the United States”. In addition, all non-borrowers holding a title interest in the property are required to sign the security instrument. In paragraph (b), VA establishes specific terms of the note and security instrument. Specifically, VA requires the note and security instrument to include the amount to be repaid to the Secretary, by the veteran, to be the amount calculated under § 36.4805(e). VA also requires repayment in full immediately upon the veteran’s transfer of title to the property, or the refinancing or payment in full otherwise, of the guaranteed loan with which the partial claim payment is associated. Finally, VA states that a veteran may make payments for the subordinate loan, in whole or in part, without charge or penalty. If the veteran makes a partial prepayment, there will be no changes in the due date unless VA agrees in writing to those changes.

As discussed in section II above, VA is revising § 36.4806 to remove provisions that were in proposed paragraphs (b)(2) through (b)(5), which would have required repayment of the COVID-VAPCP loan within ten years and would have applied a 1.00 percent interest rate to the loan. VA is also redesignating proposed paragraph (b)(6) as paragraph (b)(2). VA is also adding new paragraph (b)(3) to expressly state that a veteran may make partial prepayments of the new COVID-VAPCP loan. This conforming amendment is necessary to preserve an element of the proposed rule which would have prohibited VA from charging veterans any fees for any prepayments made during the 60-month deferment term.<sup>38</sup> As this final rule does not provide for a repayment term, and thus no deferment term, VA is preserving this crucial protection for veterans by expressly stating in new paragraph (b)(3) that veterans can make prepayments on the COVID-VAPCP loan, in whole or in part, without charge or penalty. VA is also making technical drafting edits to paragraph (a) to clarify that the “Secretary of Veterans Affairs, an Officer of the United States” should appear on the note and security instrument and the name of the incumbent Secretary should not be included unless State law requires naming a real person. VA is also making technical drafting edits to paragraph (b)(2), as redesignated, to remove unnecessary commas that appeared after “refinancing” and “otherwise” in the proposed rule.<sup>39</sup>

#### *H. § 36.4807 Application for partial claim payment*

In § 36.4807, VA requires the servicer to provide VA with the original note required by § 36.4805. Also, not later than 180 days following the date the security instrument required by § 36.4805 is fully executed, the servicer must

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<sup>38</sup> 85 FR 79142, 79160 (Dec. 9, 2020).

<sup>39</sup> 85 FR 79142, 79160 (Dec. 9, 2020).

provide VA with the original security instrument and evidence that the servicer recorded such instrument. If the recording authority causes a delay, the servicer may request an extension of time, in writing, from VA.

Servicers will utilize VA's existing loan servicing platform, the VA Loan Electronic Reporting Interface (VALERI) system, to report the partial claim payment event. Servicers must report the partial claim event within seven days of the date the veteran returns to the servicer the executed note required by § 36.4805, but not later than 120 days after the date the veteran exits the COVID-19 forbearance. Below, VA has identified the specific data elements that servicers must input into VALERI when reporting the partial claim event.

DATA ELEMENT DEFINITIONS		
Event name	Data elements	Business definition of data element
Partial claim...	Principal amount.....	Total dollar amount of all scheduled but missed monthly payments of principal, as described in § 36.4805(e)(2)(i) and (e)(3)(ii), and all scheduled monthly payments of principal due within 31 days of the date the servicer provides to the veteran the note and security instrument described in § 36.4806.
Partial claim...	Interest amount.....	Total dollar amount of all scheduled but missed monthly payments of interest, as described in § 36.4805(e)(2)(i) and (e)(3)(ii), and all scheduled monthly payments of interest due within 31 days of the date the servicer provides to the veteran the note and security instrument described in § 36.4806.
Partial claim...	Tax payments missed amount.....	Total dollar amount of all scheduled but missed monthly escrow payments for real estate taxes, as described in § 36.4805(e)(2)(ii) and (e)(3)(ii), and all scheduled monthly escrow payments for real estate taxes due within 31 days of the date the servicer provides to the veteran the note and security instrument

Partial claim...	Insurance payments missed amount.....	described in § 36.4806. Total dollar amount of all scheduled but missed monthly escrow payments for insurance premiums, as described in § 36.4805(e)(2)(ii) and (e)(3)(ii), and all scheduled monthly escrow payments for insurance premiums due within 31 days of the date the servicer provides to the veteran the note and security instrument described in § 36.4806.
Partial claim...	Tax advance amount.....	Total dollar amount of all payments the servicer made to real estate tax authorities on the veteran's behalf, as described in § 36.4805(e)(2)(ii).
Partial claim...	Tax advance date.....	The date on which the servicer made the tax advance on the veteran's behalf, as described in § 36.4805(e)(2)(ii).
Partial claim...	Insurance advance amount.....	Total dollar amount of all payments the servicer made to insurance providers on the veteran's behalf, as described in § 36.4805(e)(2)(ii).
Partial claim...	Insurance advance date.....	The date on which the servicer made the insurance advance on veteran's behalf, as described in § 36.4805(e)(2)(ii).
Partial claim...	Recording fees.....	Total dollar amount of recording fees, recording taxes, or other charges levied by the recording authority, that must be paid in order to record the security instrument, as described in § 36.4805(e)(3)(iii).
Partial claim...	Partial claim origination date.....	The date the borrower executes the note required by § 36.4805.
Partial claim...	Partial claim legal description.....	The legal description of the property.
Partial claim...	Partial claim lien position.....	The lien position of the partial claim loan.
Partial claim...	Second borrower birth date.....	The birth dates of all co-borrowers.

To address stakeholder comments discussed in section II above, VA is adopting changes to § 36.4807 to eliminate the requirement that veterans and servicers complete and submit an application form. Thus, VA deleted proposed paragraph (a) and redesignated proposed paragraphs (b) and (c) as paragraphs

(a) and (b). In newly redesignated paragraph (a), VA deleted the introductory phrase “Along with a complete application form,”. In newly redesignated paragraph (b), VA amended the deadline for which servicers must report a partial claim event through VA’s electronic loan servicing system (VALERI). The revised deadline will now be measured from the date the borrower returns the executed note to the servicer, rather than the date the borrower executes the note. VA made this revision to address commenters’ concerns about servicers being unable to dictate the date on which a veteran executes the note. See section II above. VA also amended newly redesignated paragraph (b) to include a conforming technical edit that is related to VA’s decision to increase the timeframe in which servicers must request a partial claim payment from 90 days to 120 days post-forbearance. See section II.F. above.

Regarding the VALERI data elements outlined above, VA is deleting the following data elements as they are no longer necessary given the elimination of the ten-year repayment term: Partial claim first payment due date; partial claim maturity date; and partial claim P&I payment amount. VA is also updating the following data element definitions to align with changes to § 36.4805(e)(3)(i): Principal amount; Interest amount; Tax payments missed amount; and Insurance payments missed amount.

*I. § 36.4808 No effect on the servicing of the guaranteed loan*

In § 36.4808, VA requires servicers to continue to service the guaranteed loan in accordance with subpart B of part 36. The liability of the United States for any guaranteed loan shall decrease or increase pro rata with any decrease or increase of the amount of the unpaid portion of the guaranteed loan. A partial claim payment does not affect the guaranty percentage established at the time the guaranteed loan was made. Receipt of a partial claim payment shall not



eliminate a servicer's option under 38 U.S.C. 3732 to convey to the Secretary the security for the guaranteed loan.

There is no change from the proposed rule to this section.

*J. § 36.4809 Expiration of the COVID-19 Veterans Assistance Partial Claim*

*Payment program*

In § 36.4809, VA notes that the Secretary will not accept a request for a partial claim payment after the date that is 180 days after the date the COVID-19 national emergency ends under the National Emergencies Act, unless a veteran's COVID-19 forbearance does not end until after such date. In cases where a veteran's COVID-19 forbearance ends after the subject date, the Secretary shall accept a request for a partial claim payment, provided that such request is submitted to the Secretary not later than 120 days after the date the veteran exits the COVID-19 forbearance. However, in no event will the Secretary accept a request for a partial claim payment after October 28, 2022.

VA is making several changes to the final rule text in § 36.4809 for reasons outlined in section II.E. above. First, there are technical conforming amendments in paragraph (b) related to definitional changes in § 36.4801. See section IV.B. above. VA is also adopting a change in paragraph (b) to replace "may still" with "shall" in response to public comments. Also, VA is amending paragraph (b) to include a conforming technical edit that is related to VA's decision to increase the timeframe in which servicers must request a partial claim payment from 90 days to 120 days post-forbearance. See section II.F. above. Additionally, in response to public comments, VA is replacing the date "September 9, 2021" with "October 28, 2022" in paragraph (c).

*K. § 36.4810 Oversight of the COVID-19 Veterans Assistance Partial Claim*

*Payment program*

In § 36.4810, VA sets forth the parameters for oversight of the COVID-VAPCP. It is an almost verbatim restatement of 38 U.S.C. 3704(d). Specifically, subject to notice and opportunity for a hearing, whenever the Secretary finds with respect to a partial claim payment that any servicer has failed to maintain adequate loan accounting records, or to demonstrate proper ability to service loans adequately or to exercise proper credit judgment or has willfully or negligently engaged in practices otherwise detrimental to the interest of veterans or of the Government, the Secretary may refuse either temporarily or permanently to guarantee or insure any loans made by such servicer and may bar such servicer from servicing or acquiring guaranteed loans. Notwithstanding the above, but subject to § 36.4328, the Secretary will not refuse to pay a guaranty or insurance claim on a guaranteed loan theretofore entered into in good faith between a veteran and such servicer. The Secretary may also refuse either temporarily or permanently to guarantee or insure any loans made by a lender or holder suspended, debarred, denied, or otherwise restricted from participation in FHA's insurance programs pursuant to a determination of the Secretary of Housing and Urban Development.

As noted in both the proposed and final rule notices, VA will utilize its existing loan refund process to handle applications for partial claim payments via VALERI. Upon receipt of an application, VA will conduct a two-tier review and approval of the partial claim payment, utilizing information already in its VALERI systems to verify that the servicer has brought the veteran's guaranteed loan current, that the amount requested is consistent with other requirements, and that VA has received all necessary documentation. Partial claim payments will also be subject to VA's oversight and audit activities as part of VA's regular monitoring related to adequacy of loan servicing. If VA determines, during an

audit, that a servicer did not follow VA's requirements when participating in the COVID-VAPCP, § 36.4810 expressly authorizes appropriate enforcement actions.

There is no substantive change from the proposed rule to this section. Rather, VA has included revisions to clarify the different forms of restrictions on participation in FHA programs encompassed by this section.

#### *L. Conforming Technical Amendments*

VA is adding new section 38 CFR 36.4336 that reiterates VA's parameters for oversight of loan servicing. This technical amendment is necessary to ensure that servicers adhere to the parameters outlined in § 36.4804, wherein the servicer must ensure that the partial claim option is in the veteran's financial interest. As with proposed § 36.4810, it includes an almost verbatim restatement of 38 U.S.C. 3704(d). Under this new section, subject to notice and opportunity for a hearing, whenever the Secretary finds that any servicer has failed to maintain adequate loan accounting records, or to demonstrate proper ability to service loans adequately or to exercise proper credit judgment or has willfully or negligently engaged in practices otherwise detrimental to the interest of veterans or of the Government, the Secretary may refuse either temporarily or permanently to guarantee or insure any loans made by such servicer and may bar such servicer from servicing or acquiring guaranteed loans. Notwithstanding the above, but subject to § 36.4328, the Secretary will not refuse to pay a guaranty or insurance claim on a guaranteed loan theretofore entered into in good faith between a veteran and such servicer. The Secretary may also refuse either temporarily or permanently to guarantee or insure any loans made by a lender or holder suspended, debarred, denied, or otherwise restricted from

participation in FHA's insurance programs pursuant to a determination of the Secretary of Housing and Urban Development.

VA is also amending 38 CFR 36.4333(a)(2) to ensure that records referenced in proposed §§ 36.4336 and 36.4810 are included in VA's maintenance of record requirements. Currently, holders are required to "maintain records supporting their decision to approve any loss-mitigation option for which an incentive is paid in accordance with § 36.4319(a)."<sup>40</sup> VA is deleting the phrase "for which an incentive is paid in accordance with § 36.4319(a)." To ensure that VA's partial claim payment option is covered, VA is adding a sentence noting that the holder is required to maintain records supporting their decision to pursue a partial claim payment under the COVID-19 Veterans Assistance Partial Claim Payment program as established by proposed subpart F. Regarding the length of the recordkeeping requirement, VA is retaining an element of the status quo, namely that such records shall be retained a minimum of three years from the date of any incentive paid in accordance with § 36.4319(a) or the date the veteran's guaranteed loan is made current via the COVID-VAPCP, whichever is later. Finally, VA is amending the specific authority for § 36.4333 to include 38 U.S.C. 3704(d), as this section requires the maintenance of adequate loan accounting records.

There is no substantive change from the proposed rule to this section. Rather, VA has included revisions to clarify the different forms of restrictions on participation in FHA programs encompassed by this section.

## **V. Effective Date of Final Rule**

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<sup>40</sup> 38 CFR 36.4333(a)(2).

In the notice of proposed rulemaking, VA repeated its commitment to bringing financial relief to veterans with VA-guaranteed home loans affected by the COVID-19 national emergency. VA also noted that it considered whether “good cause” existed to dispense with notice-and-comment rulemaking under the Administrative Procedure Act (APA).<sup>41</sup> However, despite the need for certainty that VA’s partial claim program would be available to veterans as they exit forbearance, VA believed the novel legal policies warranted an opportunity for public input.

As evident from this final rule notice, public input was valuable to ensuring that VA implements a partial claim payment program that delivers on its commitment. VA is now faced with determining whether it should accelerate the effective date of this program beyond statutory timeframes outlined in the Congressional Review Act.<sup>42</sup> Specifically, absent a showing of “good cause,” this final rule (which is a “major rule” under the CRA, *see infra*) will become effective the later of the date occurring 60 days after the date on which Congress receives the report, or the date the rule is published in the Federal Register.<sup>43</sup> For reasons discussed below, VA does not believe acceleration of the effective date is necessary.

In the proposed rule, VA requested specific input from VA stakeholders as to the amount of time needed to implement VA’s final rule. Anticipating that industry participants would require some amount of time to review, understand, and implement the COVID-VAPCP, VA sought additional information as to whether increased burdens or costs would accompany any accelerated

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<sup>41</sup> See 5 U.S.C. 553(b)(B).

<sup>42</sup> See 5 U.S.C. 801(a)(3)(A).

<sup>43</sup> 5 U.S.C. 801(a)(3)(A); see also 5 U.S.C. 808.

timetables. VA also requested input as how a 30- or 60-day delay in the effective date might negatively impact veterans, servicers, and other stakeholders.

VA received four comments responding to its request. Three of the four commenters indicated that the seven-day timeframe suggested by VA in its request for comments would be insufficient for servicers to operationalize the proposed rule. One commenter noted that even a 60-day timeframe was unlikely to be enough. Another commenter suggested that VA consider a 90-day timeframe to allow servicers to upgrade technology systems, develop operational procedures, and train staff. The third commenter echoed those sentiments, indicating that several months would likely be needed if VA were to finalize the rule as proposed. However, the third commenter also suggested that a shorter implementation timeframe would be needed if VA were to adopt changes to the final rule to align the COVID-VAPCP with FHA's partial claim program, thereby allowing servicers familiar with that program to adapt quickly and to utilize existing documents. Finally, as previously discussed, one commenter recommended that VA implement the COVID-VAPCP via Circular, indicating that the rulemaking process was too slow to bring needed relief to veterans.

VA understands the concerns of its stakeholders on this issue. VA also remains committed to ensuring veterans' timely access to a partial claim payment home retention option. In consideration of the comments received, VA believes the 60-day statutory timeframe under the Congressional Review Act provides time for servicers to implement the final rule without significant impact to veterans. For reasons discussed immediately below, VA also believes the 60-day timeframe will not cause undue harm to veterans.

An internal assessment indicates that approximately half of VA-guaranteed loans in forbearance will reach 360 days of forbearance sometime

during the months of May and June of 2021. However, as discussed above, VA has been a part of the coordinated federal response that extends protections for borrowers with federally backed mortgages.<sup>44</sup> For example, certain veterans can now receive COVID-19 forbearances that can remain in effect until as late as June 30, 2022. Additionally, certain veterans who may have already reached the end of their initial periods of forbearance can now receive up to two additional three-month COVID-19 forbearance periods, which can remain in effect until as late as December 31, 2021. Given these additional protections, VA now anticipates that most veterans currently in a COVID-19 forbearance will remain in such forbearance until at least late June 2021. VA also expects that most COVID-19 forbearance periods will now end in November 2021.

In light of the factors mentioned above, VA believes that allowing a 60-day timeframe between the publication date and effective date of this final rule is not “impracticable, unnecessary, or contrary to the public interest.”<sup>45</sup> VA notes that certain veterans who will exit forbearance in late June or early July of 2021 will still be able to take advantage of the partial claim option, especially since VA has provided servicers with an additional 30 days (for a total of 120 days post-forbearance) in which to complete certain actions and request a partial claim. VA has sought to publish this final rule as quickly as possible to ensure that the COVID-VAPCP will be effective in time to assist the majority of veterans whose loans are currently in forbearance without sacrificing the time needed to ensure servicers are able to prepare for assisting veterans coming out of forbearance.

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<sup>44</sup> See *Fact Sheet: Biden Administration Announces Extension of COVID-19 Forbearance and Foreclosure Protections for Homeowners*, (Feb. 16, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/16/fact-sheet-biden-administration-announces-extension-of-covid-19-forbearance-and-foreclosure-protections-for-homeowners/>. See also VA Circular 26-21-04, *Approving Forbearance Requests for Veterans Affected by COVID-19*, (Feb. 16, 2021), [https://www.benefits.va.gov/HOMELoANS/documents/circulars/26\\_21\\_04.pdf](https://www.benefits.va.gov/HOMELoANS/documents/circulars/26_21_04.pdf).

<sup>45</sup> See 5 U.S.C. 553(b)(B).

### *Executive Orders 12866 and 13563*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB) has determined that this rule is a significant regulatory action under Executive Order 12866.

VA's impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its Regulatory Impact Analysis (RIA) are available on VA's website at <http://www.va.gov/orpm/>, by following the link for "VA Regulations Published From FY 2004 Through Fiscal Year to Date."

### *Regulatory Flexibility Act*

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601-612). To assess whether the final rule can be expected to have a "significant economic impact" on small entities, VA considers the annual cost of the rule for small entities compared to their annual revenue. VA was able to determine the size of 127 out of 151 companies that service VA-guaranteed loans in COVID-19 forbearances, where the borrowers



could likely receive assistance via a partial claim. VA made this determination using the size standards from the Small Business Administration (SBA).<sup>46,47</sup> VA used data from InfoUSA and Factiva (two business data providers) along with data from the Federal Deposit Insurance Corporation (FDIC) and the National Credit Union Administration (NCUA). Out of the 127 servicers for which VA has sufficient data to determine their size, 36 (or 28.35 percent) are considered small by SBA standards. The average annual revenue of those 36 small servicers is \$13.04 million.<sup>48</sup>

To determine the economic burden of the final rule on small entities, VA first compares the average annual costs of the rule that fall on small servicers to the average annual revenue of the small servicers. The costs of the rule come from rule familiarization and the Paperwork Reduction Act (PRA) costs, which include the costs for servicers to prepare and deliver to the veteran the original note and security instrument, and then deliver the executed note and security instrument to VA. The cost of rule familiarization is \$99.90 for each guaranteed loan servicer, including the small servicers. The PRA cost estimates vary across servicers depending on how many COVID-19 forbearance loans they service that either meet or could potentially meet COVID-VAPCP requirements.

As described in the impact analysis, the estimated number of borrowers who will likely meet the requirements for assistance via a partial claim is between

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<sup>46</sup> VA uses data from InfoUSA and Factiva to determine the industry (as identified by the primary NAICS code) for the active VA-guaranteed loan servicers. For industries where size standards are determined by the average annual revenue, VA compares the revenue of each servicer in these industries, as reported in InfoUSA and Factiva, to the SBA annual revenue threshold for small businesses. For industries where size standards are determined by assets, VA compares the relevant SBA threshold for small businesses to asset data from the FDIC for servicers with primary NAICS codes 522110 (Commercial Banking) and 522120 (Savings Institutions), and asset data from the NCUA for lenders with a primary NAICS code of 522130 (Credit Unions).

<sup>47</sup> U.S. Small Business Administration, *SBA Table of Size Standards*, (2019), [https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards\\_Effective%20Aug%2019%2C%202019\\_Rev.pdf](https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%2019%2C%202019_Rev.pdf).

<sup>48</sup> VA averages the sales volumes from Factiva for all servicers considered small, including those primarily considered commercial banks, savings institutions, and credit unions.

101,132 and 151,812. VA estimates that 15 percent of those loans are serviced by small entities, or between 15,170 and 22,772 loans. Given the total PRA cost for servicers of \$36.64 per loan, the total PRA cost to average small servicers is \$15,439.49 at the lower bound and \$23,176.84 at the upper bound.

The total cost of this rule to average small VA-guaranteed loan servicer ranges from \$15,539 (\$99.90 + \$15,439.49) to \$23,277 (\$99.90 + \$23,176.84), while the average annual revenue to small servicers is \$13.04 million. VA generally considers a rule to have a “significant economic impact” when the total annual cost associated with the rule for a small entity is equal to or exceeds 1 percent of annual revenue. The total upper bound cost to small servicers is 0.18 percent of the average annual revenue to small servicers. This ratio is calculated using the total costs on small servicers, rather than the total annual costs. In subsequent years, absent the rule familiarization costs and with the dispersion of the PRA costs, the average annual cost to small servicers will be even below that level.

VA has also considered whether other economic impacts that are not easily quantifiable would have a significant impact on small servicers.<sup>49</sup> Ultimately, VA has determined that this final rule is not expected to have a significant economic impact on small servicers. The effect of the final rule is to provide servicers the opportunity to resolve COVID-19 forbearances through a home retention option that will both (1) help veterans return to making regular monthly mortgage payments to the servicer, and (2) recapitalize the servicer by purchasing veterans’ total forborne indebtedness from the servicer. As discussed above, VA has adopted several changes to the final rule in response to industry

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<sup>49</sup> 126 Cong. Rec. S10,940-10,942 (Aug. 6, 1980) (discussing that determining whether an economic impact is “significant” is not an exact standard and that agencies should not be limited to considering easily quantifiable costs).

comments regarding burdens associated with VA's proposed rule, including streamlining the process and requirements for requesting a partial claim payment. Additionally, and consistent with current VA servicing regulations and policies, servicers will not be required to offer the partial claim payment as a home retention option. Therefore, if a small servicer determines that participating in the COVID-VAPCP is not consistent with its business model, the final rule provides flexibility for the servicer to resolve forbearances using one of many existing home retention options.

Regarding the economic impact, that is, the paperwork burden, to servicers associated with this rule, VA notes that the changes adopted in this rule resulted in a 33 percent reduction in the estimated per loan paperwork burden to servicers. VA further notes that the economic costs of paperwork associated with this rule cannot be considered additive. In that regard, under existing VA statute and regulations, servicers are required to consider options to resolve a VA-guaranteed loan's delinquency once a veteran exits a COVID-19 forbearance. Each home retention and alternative to foreclosure option, as well as foreclosure itself, imposes some cost to the servicer that is already contemplated in its current business model. Under this rule, the cost to request a partial claim payment replaces the cost of whichever other option would have been selected absent the COVID-VAPCP.

Notably, one commenter stated that the cost to servicers to execute a partial claim payment under the proposed rule was roughly equivalent to the cost to execute a loan modification. As VA believes a loan modification would be the home retention option most likely to be used to resolve COVID-19 forbearances absent this rule, the net impact of this rule on small servicers is likely to be insignificant for those that choose to participate.

To assess whether the rule can be expected to affect a “substantial number of small entities,” VA considers a ratio that captures the incidence of small VA servicers in the potential universe of servicers. Specifically, VA uses the ratio of small VA servicers with guaranteed loans in COVID-19 forbearance that are likely to participate in the partial claim program to the total number of VA servicers with guaranteed loans in COVID-19 forbearance that are likely to participate in the partial claim program. As described above, 36 VA servicers out of the 127 servicers with sufficient data available are small (28.35 percent). Therefore, the final rule is expected to affect a substantial number of small entities.

While the final rule is expected to affect a substantial number of small entities, the impact will not be economically significant. On this basis, the Secretary certifies that the adoption of this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

#### *Unfunded Mandates*

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

## *Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521) requires that VA consider the impact of paperwork and other information collection burdens imposed on the public. Under 44 U.S.C. 3507(a), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number.<sup>50</sup>

This final rule contains provisions that constitute a revised collection of information under 38 CFR 36.4333, which is currently approved under OMB control number 2900-0515. This rule also contains provisions that constitute a new collection of information under 38 CFR 36.4336 and 38 CFR 36.4810, which will be added under OMB control number 2900-0515. This rule also contains provisions that constitute a new collection of information under 38 CFR 36.4807, which will be added under existing OMB control number 2900-0021. Finally, this rule contains provisions that constitute a new collection of information under 38 CFR 36.4803, 36.4805, 36.4806, and 36.4807.

As required by 44 U.S.C. 3507(d), VA has submitted to OMB for its review and approval the information collections (both new and as amended) that have not yet been approved. VA will publish in the *Federal Register* a notice when OMB approves these information collections. In the interim, VA has retained the placeholder control numbers that appeared in the proposed rule. If OMB does not approve the collections of information as requested, VA will immediately remove the provisions containing a collection of information or take such other action as is directed by the OMB.

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<sup>50</sup> See also 5 CFR 1320.8(b)(3)(vi).

## *Catalog of Federal Domestic Assistance*

The Catalog of Federal Domestic Assistance number and title for the program affected by this document is 64.114, Veterans Housing—Guaranteed and Insured Loans.

## *Congressional Review Act*

The Office of Information and Regulatory Affairs has determined that this regulatory action is a major rule under Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act), 5 U.S.C. 801-808, because it is likely to result in an annual effect on the economy of \$100 million or more. In accordance with 5 U.S.C. 801(a)(1), VA will submit to the Comptroller General and to Congress a copy of this Regulation and the Regulatory Impact Analysis associated with the Regulation.

## **List of Subjects in 38 CFR Part 36**

Condominiums, Housing, Individuals with disabilities, Loan programs—housing and community development, Loan programs—veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

## *Signing Authority*

Denis McDonough, Secretary of Veterans Affairs approved this document on April 8, 2021 and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

***Luvenia Potts***

Regulations Development Coordinator,

Office of Regulation Policy & Management,  
Office of the Secretary,  
Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 36 as set forth below:

**PART 36 – LOAN GUARANTY**

1. The authority citation for part 36 continues to read as follows:

Authority: 38 U.S.C. 501 and 3720.

2. Amend § 36.4333 by revising paragraph (a)(2) and the two parenthetical sentences at the end of the section to read as follows:

**§ 36.4333 Maintenance of records.**

(a) \* \* \*

(2) The holder shall maintain records supporting their decision to approve any loss mitigation option. The holder shall maintain records supporting their decision to pursue a partial claim payment under the COVID-19 Veterans Assistance Partial Claim Payment program established under subpart F of this part. Such records shall be retained a minimum of 3 years from the date of any incentive paid in accordance with § 36.4319(a) or, in the case of a partial claim payment under the COVID-19 Veterans Assistance Partial Claim Payment program, the date the veteran's guaranteed loan is made current under such program, whichever is later, and shall include, but not be limited to, credit reports, verifications of income, employment, assets, liabilities, and other factors affecting the obligor's credit worthiness, work sheets, and other documents supporting the holder's decision.

\* \* \* \* \*

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0515)

(Authority: 38 U.S.C. 3703(c)(1), 3704(d))



3. Add § 36.4336 to read as follows:

**§ 36.4336 Oversight of servicing.**

(a) Subject to notice and opportunity for a hearing, whenever the Secretary finds that any servicer has failed to maintain adequate loan accounting records, or to demonstrate proper ability to service loans adequately or to exercise proper credit judgment or has willfully or negligently engaged in practices otherwise detrimental to the interest of veterans or of the Government, the Secretary may refuse either temporarily or permanently to guarantee or insure any loans made by such servicer and may bar such servicer from servicing or acquiring guaranteed loans.

(b) Notwithstanding paragraph (a) of this section, but subject to § 36.4328, the Secretary will not refuse to pay a guaranty or insurance claim on a guaranteed loan theretofore entered into in good faith between a veteran and such servicer.

(c) The Secretary may also refuse either temporarily or permanently to guarantee or insure any loans made by a lender or holder suspended, debarred, denied, or otherwise restricted from participation in FHA's insurance programs pursuant to a determination of the Secretary of Housing and Urban Development. (The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0515)

(Authority: 38 U.S.C. 3703, 3704(d), 3720)

4. Add subpart F, consisting of §§ 36.4800 through 36.4810, to read as follows:

Subpart F -- COVID-19 Recovery Measures

Sec.

36.4800 Applicability.

36.4801 Definitions.

36.4802 General purpose of the COVID-19 Veterans Assistance Partial Claim Payment program.  
36.4803 General requirements of the COVID-19 Veterans Assistance Partial Claim Payment program.  
36.4804 Partial claim payment as a home retention option.  
36.4805 Terms of the partial claim payment.  
36.4806 Terms of the assistance to the veteran.  
36.4807 Application for partial claim payment.  
36.4808 No effect on the servicing of the guaranteed loan.  
36.4809 Expiration of the COVID-19 Veterans Assistance Partial Claim Payment program.  
36.4810 Oversight of the COVID-19 Veterans Assistance Partial Claim Payment program.

### **§ 36.4800 Applicability.**

This subpart applies to all loans guaranteed by VA, to the extent such loans are affected by the COVID-19 national emergency.

(Authority: 38 U.S.C. 3703(c), 3720, 3732)

### **§ 36.4801 Definitions.**

The following definitions of terms apply to this subpart:

*Alternative to foreclosure* means an alternative to foreclosure for which the Secretary may pay an incentive under § 36.4319. These alternatives include compromise sale (sometimes called a short sale) and deed-in-lieu of foreclosure.

*COVID-19 forbearance* means any forbearance of scheduled monthly guaranteed loan payments, granted to a veteran under section 4022 of the Coronavirus Aid, Relief, and Economic Security Act (Public Law 116-136). It can also include any forbearance of scheduled monthly guaranteed loan payments, granted to a veteran for a financial hardship due, directly or indirectly, to the COVID-19 national emergency.

*COVID-19 indebtedness* means the dollar amount the veteran is obligated to pay under the guaranteed loan terms, but that is not collected during a COVID-19 forbearance.

*Guaranteed loan* means a loan guaranteed under chapter 37 of title 38, United States Code.

*Loss-mitigation option* means a loss-mitigation option for which the Secretary may pay an incentive under § 36.4319. These options include a repayment plan, special forbearance, and loan modification.

*Secretary* means the Secretary of Veterans Affairs, or any employee of the Department of Veterans Affairs (VA) authorized to act in the Secretary's stead.

*Servicer* means, for the purposes of this subpart, the holder, servicer, or servicing agent, as defined in § 36.4301. The terms can apply jointly or severally, or jointly and severally.

(Authority: 38 U.S.C. 3703(c), 3720, 3732)

**§ 36.4802 General purpose of the COVID-19 Veterans Assistance Partial Claim Payment program.**

The COVID-19 Veterans Assistance Partial Claim Payment program is a temporary program to help veterans who have suffered a COVID-19 financial hardship. Notwithstanding the requirements elsewhere in this part regarding payment of a guaranty claim or refunding a loan, VA may assist a veteran exiting a COVID-19 forbearance by purchasing from the servicer the veteran's COVID-19 indebtedness. Such a purchase is called a partial claim payment. In exchange for VA's partial claim payment on behalf of the veteran, the veteran must agree to repay the Secretary, in the amount of such partial claim payment, upon loan terms established by the Secretary.

(Authority: 38 U.S.C. 3703(c), 3720, 3732)

**§ 36.4803 General requirements of the COVID-19 Veterans Assistance Partial Claim Payment program.**

The following general requirements must be met before the Secretary will allow for participation in the COVID-19 Veterans Assistance Partial Claim Payment program:

(a) The loan for which a partial claim payment is requested must be a guaranteed loan that was either—

(1) Current or less than 30 days past due on March 1, 2020; or

(2) Made on or after March 1, 2020;

(b) The veteran on whose behalf VA will pay a partial claim payment both received a COVID-19 forbearance and missed at least one scheduled monthly payment;

(c) There remains unpaid at least one scheduled monthly payment that the veteran did not make while under a COVID-19 forbearance;

(d) The veteran indicates that the veteran can resume making scheduled monthly payments, on time and in full, and that the veteran occupies, as the veteran's residence, the property securing the guaranteed loan for which the partial claim payment is requested; and

(e) The veteran executes, in a timely manner, all loan documents necessary to establish an obligation to repay the Secretary for the partial claim payment.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–XXXX)

(Authority: 38 U.S.C. 3703(c), 3720, 3732)

**§ 36.4804 Partial claim payment as a home retention option.**

(a) The Veterans Assistance Partial Claim Payment program is designed to address the financial hardships due, directly or indirectly, to the COVID-19 national emergency. A servicer may therefore use the partial claim payment

option, even in cases where other home retention options are feasible, provided the partial claim payment option is in the veteran's financial interest.

(b) If the veteran notifies the servicer that the veteran does not want to retain ownership of the property securing the guaranteed loan, the servicer may immediately proceed to offering an alternative to foreclosure.

(Authority: 38 U.S.C. 3703(c), 3720, 3732)

**§ 36.4805 Terms of the partial claim payment.**

(a) In order for a partial claim payment to be payable, the servicer must submit to the Secretary, not later than 120 days after the date the veteran exits the COVID-19 forbearance, a request for such payment, as prescribed in § 36.4807.

(b) The amount of the partial claim payment that VA will pay to the servicer, as calculated under paragraph (e) of this section, shall not exceed 30 percent of the unpaid principal balance of the guaranteed loan. For the purposes of this paragraph (b), the unpaid principal balance of the guaranteed loan means such balance as of the date the veteran entered into a COVID-19 forbearance.

(c) VA will pay only one partial claim payment per guaranteed loan.

(d) VA will pay only one partial claim payment per veteran.

(e)(1) Because VA will pay only one partial claim payment per guaranteed loan, and only one partial claim payment per veteran, a servicer must, when calculating the amount of partial claim payment to be paid by VA to the servicer, include the full amount of indebtedness that is necessary to bring the guaranteed loan current.

(2) To bring the guaranteed loan current, servicers must include the full COVID-19 indebtedness, comprising—

(i) All scheduled but missed monthly payments of principal and interest;  
and

(ii) As applicable, all scheduled but missed monthly escrow payments for real estate taxes and insurance premiums, or where the guaranteed loan documents do not provide for monthly escrowing, all payments the servicer made to real estate tax authorities and insurance providers, on the veteran's behalf, during the COVID-19 forbearance.

(3) Also in bringing the guaranteed loan current, servicers must include—

(i) All scheduled monthly payments (comprising principal, interest, and escrow payments for real estate taxes and insurance premiums) due within 31 days of the date the servicer provides to the veteran the note and security instrument described in § 36.4806;

(ii) If applicable, all scheduled monthly payments (comprising principal, interest, and escrow payments for real estate taxes and insurance premiums) that were missed on or after March 1, 2020, but before the veteran was granted the COVID-19 forbearance; and

(iii) The actual amount of recording fees, recording taxes, or other charges levied by the recording authority, that must be paid in order to record the security instrument described in § 36.4806.

(4) Except for amounts identified in paragraphs (e)(2) and (3) of this section, servicers shall not include any amounts (e.g., fees, penalties, or interest) beyond the amounts scheduled or calculated as if the veteran made all contractual payments on time and in full under the terms of the guaranteed loan.

(5) Nothing in this section shall preclude a veteran from making an optional payment or a servicer from waiving a veteran's indebtedness, such that

the amount of partial claim payment would not exceed the 30 percent cap described in paragraph (b) of this section.

(6) If the servicer miscalculates the partial claim amount, resulting in an overpayment to the servicer, the amount of such overpayment shall constitute a liability of the servicer to the United States. The servicer must remit the overpaid amount immediately to VA.

(7) If the servicer miscalculates the partial claim amount, resulting in underpayment (i.e., an amount insufficient to bring the guaranteed loan current), the servicer must waive the difference.

(8) Servicers shall not include any amounts for a monthly payment that is scheduled to be paid on a date that is more than 31 days after the servicer provides to the veteran the note and security instrument described in § 36.4806.

(f) The servicer must prepare a note and security instrument in favor of the “Secretary of Veterans Affairs, an Officer of the United States”. The name of the incumbent Secretary should not be included unless State law requires naming a real person.

(1) The note must be consistent with the terms described in § 36.4806 and include all borrowers who are obligated on the guaranteed loan; and

(2) The security instrument must include all persons (borrowers, as well as non-borrowers) who hold a title interest in the property securing the guaranteed loan.

(g) Subject to paragraph (a) of this section, all loan documents must be fully executed not later than 90 days after the veteran exits the COVID-19 forbearance.

(h) The servicer must record the security instrument timely, as prescribed in § 36.4807.

(i) The servicer must not charge, or allow to be charged, to the veteran any fee in connection with the COVID-19 Veterans Assistance Partial Claim Payment program.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–XXXX)

(Authority: 38 U.S.C. 3703(c), 3720, 3732)

**§ 36.4806 Terms of the assistance to the veteran.**

(a) If a veteran chooses to accept VA's assistance (i.e., a partial claim payment to the servicer, on the veteran's behalf), the veteran, and all co-borrowers on the guaranteed loan, must execute a note and security instrument in favor of the "Secretary of Veterans Affairs, an Officer of the United States". The name of the incumbent Secretary should not be included unless State law requires naming a real person.

(b) Specific terms of the note and security instrument shall include the following:

(1) The amount to be repaid to the Secretary, by the veteran, is the amount calculated under § 36.4805(e);

(2) Repayment in full is required immediately upon—

(i) The veteran's transfer of title to the property; or

(ii) The refinancing or payment in full otherwise of the guaranteed loan with which the partial claim payment is associated.

(3) A veteran may make payments for the subordinate loan, in whole or in part, without charge or penalty. If the veteran makes a partial prepayment, there will be no changes in the due date unless VA agrees in writing to those changes.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–XXXX)



(Authority: 38 U.S.C. 3703(c), 3720, 3732)

**§ 36.4807 Application for partial claim payment.**

(a) The servicer must provide VA with the original note required by § 36.4805. Not later than 180 days following the date the security instrument, required by § 36.4805, is fully executed, the servicer must provide VA with the original security instrument and evidence that the servicer recorded such instrument. If the recording authority causes a delay, the servicer may request an extension of time, in writing, from VA.

(b) Servicers must report a partial claim event to VA through VA's existing electronic loan servicing system within seven days of the date the veteran returns to the servicer the executed note required by § 36.4805, but not later than 120 days after the date the veteran exits the COVID-19 forbearance.

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 2900-0021 and 2900-XXXX)

(Authority: 38 U.S.C. 3703(c), 3720, 3732)

**§ 36.4808 No effect on the servicing of the guaranteed loan.**

(a) Servicers must continue to service the guaranteed loan in accordance with subpart B of this part.

(b) The liability of the United States for any guaranteed loan shall decrease or increase pro rata with any decrease or increase of the amount of the unpaid portion of the guaranteed loan. A partial claim payment does not affect the guaranty percentage established at the time the guaranteed loan was made.

(c) Receipt of a partial claim payment shall not eliminate a servicer's option under 38 U.S.C. 3732 to convey to the Secretary the security for the guaranteed loan.

(Authority: 38 U.S.C. 3703(c), 3720, 3732)

**§ 36.4809 Expiration of the COVID-19 Veterans Assistance Partial Claim Payment program.**

(a) Subject to paragraph (b) of this section, the Secretary will not accept a request for a partial claim payment after the date that is 180 days after the date the COVID-19 national emergency ends under the National Emergencies Act, 50 U.S.C.161.

(b) If a veteran's COVID-19 forbearance does not end until after the date described in paragraph (a) of this section, the Secretary shall accept a request for a partial claim payment, provided that such request is submitted to the Secretary not later than 120 days after the date the veteran exits the COVID-19 forbearance.

(c) Notwithstanding paragraphs (a) and (b) of this section, the Secretary will not accept a request for a partial claim payment after October 28, 2022.

(Authority: 38 U.S.C. 3703(c), 3720, 3732)

**§ 36.4810 Oversight of the COVID-19 Veterans Assistance Partial Claim Payment program.**

(a) Subject to notice and opportunity for a hearing, whenever the Secretary finds with respect to a partial claim payment that any servicer has failed to maintain adequate loan accounting records, or to demonstrate proper ability to service loans adequately or to exercise proper credit judgment or has willfully or negligently engaged in practices otherwise detrimental to the interest of veterans or of the Government, the Secretary may refuse either temporarily or permanently to guarantee or insure any loans made by such servicer and may bar such servicer from servicing or acquiring guaranteed loans.

(b) Notwithstanding paragraph (a) of this section, but subject to § 36.4328, the Secretary will not refuse to pay a guaranty or insurance claim on a guaranteed loan theretofore entered into in good faith between a veteran and such servicer.

(c) The Secretary may also refuse either temporarily or permanently to guarantee or insure any loans made by a lender or holder suspended, debarred, denied, or otherwise restricted from participation in FHA's insurance programs pursuant to a determination of the Secretary of Housing and Urban Development.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0515)

(Authority: 38 U.S.C. 3703, 3704(d), 3720)

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